THE NEW YORK

Certified Public Accountant

VOL. XXVI — *August • 1956* — No. 8

Society and Editorial Offices: 677 Fifth Avenue, New York 22, N. Y.

Opinions, Please!

Starting with July, 1956, our magazine, *The New York Certified Public Accountant,* has been published in a smaller and more convenient size, and its color and cover design have been materially changed. In fact, the magazine has an entirely new format and type-face style.

These changes were made only after thorough study at a number of meetings held during the past year by your Committee on Publications, which finally decided to put into effect these changes which have been under consideration for some time.

In the current August issue another change has been made in the Table of Contents page which we feel will make it less crowded and easier to read. We also plan to enlarge the use of our "Letters to the Editor" page, where members can express their views on professional matters in truly traditional style.

From time to time, we expect to make further improvements in the publication which we feel certain will enhance its attractiveness, readability, and value to our members.

In order to be alert to the preferences of our readers, your views are earnestly solicited by the Committee on Publications and the Editor. We ask you to send us your personal reactions to these innovations as well as your suggestions for further improvements which will make the magazine of even greater use and value to our members and our profession.

—The Editor.

Book Reviews

The Encyclopedia of Tax Procedures

Edited by J. K. Lasser and Staff of J. K. Lasser Tax Institute. PRENTICE-HALL, INC., New York, N. Y., 1956. Pages: 1,792; $29.50.

At the time of his death, J. K. Lasser had started this 1,792-page tax encyclopedia with the assistance of 101 tax specialists.

This voluminous compilation is based on the 1954 Code and arranged in the following manner:

PART	I	Planning an Organization and Operation
"	II	Reorganizing the Business
"	III	Business Accounting
"	IV	Business Expenses and Losses
"	V	Business Management and Problems
"	VI	Dividends and Other Relations with Stockholders
"	VII	Making Sales and Exchanges
"	VIII	Making Particular Types of Sales or Purchases
"	IX	Individual Transactions

As can be seen from the chapter headings, the areas of individual and corporate problems are covered thoroughly.

The encyclopedia is well indexed and profusely annotated. This is of immeasurable aid in finding the answers to particular problems.

A word of caution is required, however; the weakness of all bound tax books is found here. Time produces changes in our laws. These changes cannot be incorporated within these covers.

With the above exception in mind, it is an excellent compilation of what course of action to follow in order to minimize tax liability under the 1954 Code.

JOSHUA WACHTEL

Bernard M. Baruch School of Business and Public Administration
The City College of New York

(Continued on page 467)

WHAT HAPPENS TO PENSION PLANS WHEN COMPANY PROFITS DECLINE?

By I. AUSTIN KELLY III

President, National Employee Relation Institute

Have you ever suggested to a client that a pension plan would be an ideal way to obtain substantial tax advantages, only to have him say: "Sure, but how do I pay the annual deposits if business drops?"

This is one of the common misunderstandings about pension and profit-sharing plans—perhaps because *some* plans really do become a problem under such circumstances. But it *is* possible to design a plan that's completely flexible—a plan that is hinged directly to company profits. If earnings go down, the annual deposits can be reduced or skipped entirely. Later, if profits go up, the plan can be restored to its original level—or continued on a lower deposit level—or converted to a "paid-up" plan in proportion to the total amount of deposits previously made. The choice is up to the company itself.

Another mistaken idea about pension-profit-sharing plans is that many small corporation owners think they are ineligible because they have too few employees. Even you may be surprised to know that it is possible to have a pension plan where only *one* employee participates. For the actual fact is that there is *no* minimum on the number of persons needed to set up a sound plan that is acceptable to Internal Revenue for tax deductions.

Would you like to know more about how these and other pension-profit-sharing problems can be solved? As I mentioned in my article last month, my organization specializes in helping accountants install pension and profit-sharing plans for their small-corporation clients. During the past 24 years we have designed more than 200 plans . . . working closely with the employer's accountant to assure the best-possible plan.

From this experience have come certain ideas and simplified procedures that many accountants have found especially helpful. We shall be glad to share these ideas with you and to give you a copy of our new booklet *Let's Talk Sense About Pension and Profit-Sharing Plans.* Naturally, there is no obligation.

Just write me personally at my office (50 East 42nd Street, New York 17, N. Y.) or call OXford 7-5423. *—Advertisement—*

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BUSINESS OPPORTUNITIES (Cont'd)

(Continued from page 464)

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AN ADIRONDACK VIEW

Vacation Sights are advertised extensively and with bumper signs. By 1960 an extra for new cars will be bumpers on the sides, in order to have room to put the signs: Joyland, Toyland, East Pole, West Pole, Santa Claus' City, Santa Claus' Barn, Cow's Caverns, Old Mother Duck, Pleasure Island, Stockade Village, Land-I-Don't-Believe, Old McGobble's Farm, etc.

For no money and less time, there are vacation sights you and the kids will never forget. Take the less-used roads—and drive slowly (or "slow", per traffic English). Then you may see and hear: a bobolink, singing as he flies; a doe with its fawn, listening for danger sounds; a meadow lark whistling; a fox sitting in the road; a porcupine meandering across the pavement or climbing a tree; a beaver waddling to the water; a partridge and chicks wallowing in the dust; or the one we saw only once, many years ago—Mamma Chipmunk followed by her four children, running like a train of cars along a wall, then up a tree, then presto—five bright faces in five tree notches, looking down at us.

Drive fast — and see the hospital; drive slow—and see the world.

LEONARD HOUGHTON, CPA
Saranac Lake Branch of
the "Adirondack Chapter."

Book Reviews

(Continued from page 461)

Operating Results of Department and Specialty Stores in 1955

By Malcolm P. McNair and David Carson. Bureau of Business Research Bulletin No. 145, Harvard University Graduate School of Business Administration, Boston, Mass., 1956. Pages: vii + 70; $5.00.

This, the thirty-sixth in a series of annual reports on the operations of department and specialty stores prepared by the Harvard Bureau of Business Research, marks a sharp transition from the past. It is the first such report presenting exclusively figures based on the new expense center method of expense classification promulgated by the Controllers' Congress of NRDGA. Although the authors are apologetic as to shortcomings resulting from the transition, they have no need to be. The report is most informative and based on data submitted by 342 department stores and 87 departmentalized specialty stores, it presents statistics which store executives and their advisors will find most enlightening both with respect to comparisons for last year and as a guide to the future. Of particular interest is the textual material supplied by the authors.

The report is divided into five sections. Section I presents a summary of 1955 results covering pertinent highlights and an appraisal of current problems. Sections II and III are devoted to expense center productivity data. These sections should be required reading for all interested in the field. Section IV presents a series of special analyses of great interest and Section V the general operating results. There is also an appendix explaining the source data and various significant statistics. The report contains 30 tables and 3 charts.

Professor McNair and Mr. Carson are to be complimented on the results of the efforts, particularly in view of the problems they encountered in the expense classification transition.

Leonard Price

New York, N. Y.

Embezzlement Controls for Business Enterprises

By Lester A. Pratt. Fidelity and Deposit Co. of Maryland, 2244 Fidelity Bldg., Balt. 3, Md.; June, 1956. Pages: 32; available without charge to employers who request it on their business letterheads.

Practical methods of combatting embezzlements of money, merchandise and other materials are described in this booklet, written by a nationally recognized authority on fraud prevention. It contains a check list for determining the adequacy of a firm's embezzlement controls.

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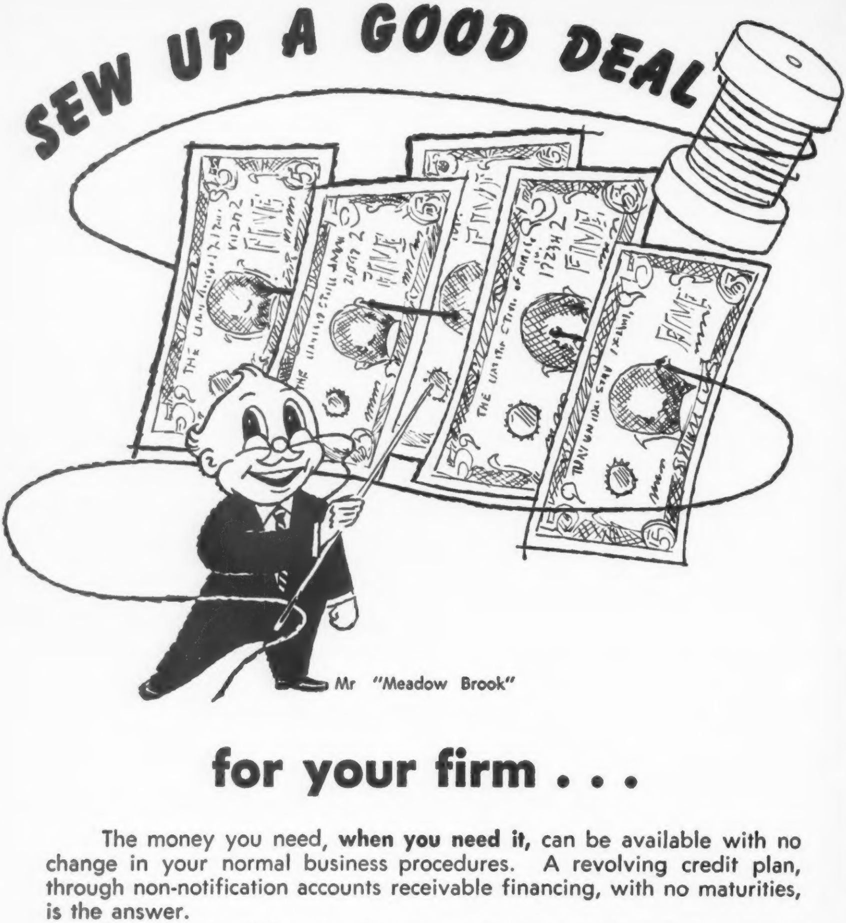
SEW UP A GOOD DEAL
Mr "Meadow Brook"

THE NEW YORK CERTIFIED PUBLIC ACCOUNTANT

EMANUEL SAXE, *Managing Editor*

The matters contained in this publication, unless otherwise stated, are the statements and opinions of the authors of the articles, and are not promulgations by the Society.

VOL. XXVI — *August • 1956* — NO. 8

The President's Page

HAROLD R. CAFFYN
"A Saga of Service"

There is a natural human desire on the part of those members of a Society who are truly interested in it to take an important part in its activities. The desire—based on this motive of deep interest is laudable — for without it progress would be laggard.

The background of some of those who have held high posts is not always known. As with an iceberg, the shining, glittering one-eighth that projects above the water has the solid base of seven-eighths not visible.

Harold Caffyn is a remarkable demonstration of this. Early in his accounting career he joined the American Institute of Accountants and immediately began unobtrusive, but active service on its committees, starting with the prosaic but important Committee on By-Laws in 1928. Every year since he has functioned on some committee as a member or chairman, or as an officer. The list is impressive: Budget and Finance (1935-36; 1950-53); Special Committee on 50th Anniversary Celebration (1936-37); Cooperation with Bankers (1937-39); Board of Examiners (1940-46); Student Societies (1940-41); Public Information (1946-48); Selection of Personnel (1947-50); Placements (1948-49); Treasurer (1950-52); Executive Committee (1950-53); Publications (1950-52); By-Laws (1953-55); Advisory Committee on Professional Ethics (1955-56).

He received his New York State Certified Public Accountant certificate in 1936 and promptly joined the New York State Society in 1937. Again he went to work and in the New York State Society has every year served on at least one committee. In 1947 he served on five. The record is once more impressive: Meetings (1938-40); Publications (1939-41); Public Relations (1939-41; 1951-52); Cooperation with Credit Men (1941-42); Administration of Accounting Engagements (1943-44); Wartime Economic Controls (1943-45); Cooperation with Veterans (1944-46); Administration of Accountants' Practice (1945-48); Education (1947-48); Membership (1947-48); Auditor's Liability and Liability Insurance (1947-48); Director (1948-50; 1955); Committees (1949-50); Cooperation with State Education Department (1949-50); Nominations (1949); Cooperation with the Bar (1950-51); Vice President (1951); Awards (1951); Survey (1952-53); First Vice President (1954); Advisory Committee to the State Comptroller (1955); President (1955); and Advisory Committee on Appointments (1956).

I doubt that there is any one in the profession who has such a record of

continuous, self-sacrificing, effective service as Harold Caffyn. He is a shining example to the younger men. With all of this activity he still has had time for fascinating hobbies—travel, photography, music, community and charitable work.

Harold Caffyn has given of himself unstintingly. What he has received in return are intangibles—the consciousness of service to a great and growing profession and the companionship, respect and affection of hundreds, if not thousands, of people all over the United States.

The Bohemian Club of San Francisco has in its membership many artistically talented people, as well as many business men. At its annual gathering in a solemn grove of giant redwoods, musical shows written by members are produced, orchestras of members give concerts, and members give superb talks on an infinite variety of subjects. Naturally, a few carry the leads and the spotlight is on them. The many others who participate serve without the limelight. These, they say, are "carrying a spear for Bohemia". Harold Caffyn carried a spear for the Institute and the Society for many years before he came into the spotlight. What he has done, is something which the younger members of the Society well may emulate. It is indeed a saga of service.

ARTHUR B. FOYE,
President

An Example of Advisory Services by CPAs

By Paul W. Pinkerton, C.P.A.

This paper presents a case study showing how an accounting firm rendered invaluable assistance to one of its clients in connection with the financing of the latter's growth and expansion.

It is not unusual that a company should turn to its CPAs for advice and assistance at a time when new capital is needed. As with other types of management advisory services, the extent to which such service can be rendered depends largely on the training and experience of the practitioner and his staff.

The situation existing when new capital is needed often suggests the advisability of establishing or revising forecasting and budgeting procedures, and loan agreements may well require reports not previously prepared. The CPA is qualified to assist in the development of needed revisions in accounting procedures and reports.

Similarly, other procedures of a growing company should be reviewed and revised in the light of changed conditions.

Paul W. Pinkerton, C.P.A., is a member of our Society and of the American Institute of Accountants. He was graduated from the University of Michigan in 1938. He is a partner of Haskins & Sells. Mr. Pinkerton has served on committees of the Society, and is presently on the Committee on Management Advisory Services.

This paper was presented by him at a panel discussion on Management Advisory Services, which took place on June 5, 1956, at the Twenty-third Annual Conference of the Society, held at Pocono Manor Inn, Pocono Manor, Pa.

Background of the Subject— Company's Problem

These opportunities for service were presented in a case with which I am familiar. The company involved has been a fairly small manufacturer of electro-mechanical equipment. The equipment, which is used in only one industry, is leased rather than sold. The lease provides for service and maintenance by the owner.

For many years the company's growth had been steady but not rapid. The capital needed to finance the construction of the equipment was obtained by reinvesting earnings.

Within recent years the situation has changed materially. Through a natural transition the company entered the electronics field, after the development of an electronic system designed for an industry entirely different from that originally served. The principle of this equipment is applicable to many industries but each equipment system requires extensive designing for the special purpose to be served.

Althought the company was entering the electronics field, the demand for the electro-mechanical equipment continued at a steady pace.

Five-Year Cash Forecasts

Recognizing the need for additional capital, the company called in its accountants. The accountants began by preparing, in conjunction with the company's treasurer, a cash forecast for five years. In making the forecast, it was

of course necessary for the company's executives to make various estimates of future activity—not a simple task.

An important element affecting the forecasts related to income taxes. I'm not suggesting that the accountants could tell their client what the rates would be into the distant future. That would be expecting too much. But a major factor in estimating the incidence of income taxes hinged on the accounting treatment of engineering and development costs, which were expected to be relatively heavy.

Financing the Expansion by Incurring Debt

On the basis of the forecasts and related material, the management of the company decided it was advisable to finance the expansion by incurring debt, rather than by issuing stock, because it appeared that the expansion for two or three years would be at a fairly constant rate, rather than at an increasing rate. After this period, cash resulting from regular operations was expected to provide the additional long-run capital.

Two types of debt financing seemed advisable:

1. Short-term bank loans, to finance the engineering and construction of the equipment, over a period of 10 to 20 months, and
2. Longer-term loans (from an insurance company), for carrying the equipment during the rental period of 8 to 10 years.

The amounts required and the repayment terms were worked out in negotiations by the company with the lenders, on the basis of the forecasts.

The bank loans took the form of revolving credits, issued for a term of three years, but repayable earlier from the proceeds of the insurance company loans.

The longer-term loans took the form of collaterial trust bonds issued serially at the time of installation of each electronic system, repayable over the term of the lease. Most leases are for a term of eight to ten years. Financing of about a dozen electronic systems was provided for in the collateral trust agreement.

During the negotiations, the company's attorneys consulted with the accountants in connection with the accounting and financial aspects of the loans. Particular attention was given to the wording of covenants relating to accounting matters.

Systemization of Accounting and Reporting Practices

The preparation of the original cash forecasts had been very time-consuming because of the absence of any systematic method of obtaining the necessary information. The revolving credit agreement provided that the company would submit to the bank quarterly cash forecasts covering the succeeding eighteen months. The next phase of the accountants' service accordingly was directed toward the design of a routine system of assembling the information needed. Under this system the company assigned responsibility for each element of the forecast to the proper individual in sales, engineering, manufacturing, and so on. A time-table for the submission of the subsidiary data was prepared. The treasurer's duties in connection with the forecasts were to coordinate the work of others, to develop the information as to proceeds of loans and loan principal repayments and interest, and to assemble the forecast.

The company's management recognized that revisions in the structure of management reports would be required in order to guide and control the operations of the business, which was rapidly

changing its character. In consultation with the accountants, a system of reports, based on a profit plan, was developed. One of the basic reports was designed to show the estimated profit on each contract for electronic equipment, by years, on what might be called an "actual" basis. The report also showed the same information in total for all contracts. The profit picture was affected by reason of the treatment of design and engineering costs as period costs. Subsidiary records were developed to permit the accumulation of such costs by contract. An equitable method of allocating overhead costs between the electro-mechanical line and the electronic line, and by contract within the latter, was developed.

This type of report was necessary in order to permit comparison of projected and actual results periodically, by contract, for appropriate action.

Review and Cost Control Procedures

The first budget prepared under the loan agreement indicated that a cash deficiency would be created within the eighteen-month period. The management reviewed this situation with the accountants and two steps were decided upon:

1. The initiation of a cost control program, and
2. A stretch-out of the period during which initial engineering and manufacturing costs would be incurred.

The cost control program began with discussions with the heads of the various departments to point out the need for lower costs and to explore areas where costs might be lowered. As a result of the initial discussions, the forecast expenses were reduced materially, in part because the original estimates were too liberal. The cost control program is of course implemented by reports comparing the planned costs with the actual.

After this more careful projection of costs on the basis of the original schedule, a study was made to determine what engineering and construction costs could be postponed or incurred over a longer period. Because of delivery commitments, little could be done about contracts which had already been executed. Accordingly, the engineering effort devoted to prospective contracts was to be reduced and longer deliveries were to be quoted.

The growth of the company during the recent period suggested to the company that a general review of accounting and paperwork procedures would be in order, and the accountants were asked to make such a review. Many areas of operations had already been covered in connection with the studies of forecasting, management reports, and cost control. Only minor revisions in procedures were recommended as a result of the general review.

The services which were rendered by the accountants to this company are perhaps typical of those which might be rendered in similar situations. All of the services rendered were directed at specific problems. All of the services rendered were directly related to accounting or financial matters.

Production and Inventory Controls In Apparel Manufacturing

By Louis J. Klein, C.P.A. and Richard H. Goldberg, C.P.A.

This article, in the nature of a case-study, shows how the apparel manufacturing industry controls production and inventories. Many accountants may be able to render a valuable management service to their clients in setting up such basic controls as these.

To understand inventory controls in apparel manufacturing it is very helpful to the accountant to know the conditions under which this industry operates and the way these conditions affect its planning of purchases and production. Within this framework, it is then possible for the accountant to see how inventory controls are set up. Since apparel manufacturing embraces many industries within it, the scope of this article will be general. It will deal with those problems and practices which apply to most companies in this field.

Louis J. Klein, C.P.A., has been a member of our Society since 1945 and was Chairman of the Committee on Clothing Manufacturing Accounting. He is also a member of the New York Bar. Mr. Klein is a partner in the firm of Aronson & Oresman, Certified Public Accountants.

Richard H. Goldberg, C.P.A., is a member of our Society and is serving on its Committee on Management Advisory Services. He is in charge of the Management Survey Department at Aronson & Oresman, Certified Public Accountants. Mr. Goldberg's articles in the fields of management and procedures have appeared in this and other publications.

This paper was prepared under the joint auspices of the Committee on Clothing Manufacturing Accounting and the Committee on Management Advisory Services. Portions of it were presented by Mr. Goldberg at a panel discussion on Management Advisory Services, which took place on June 5, 1956, at the Twenty-Third Annual Conference of the Society, held at Pocono Manor Inn, Pocono Manor, Pennsylvania.

For reasons of space, this article will not deal with controls over materials and garments in the hands of outside contract manufacturers, although the use of contractors is common in the apparel industry.

Basic Factors Underlying the Apparel Industry

The apparel manufacturing company faces an unusual set of conditions in its effort to make a profit. It operates in a highly competitive market. It makes a wide variety of items in terms of garment patterns, fabric patterns, colors and sizes.

Furthermore, it deals with a consuming public whose tastes can change very quickly. Thus, in certain instances, it must turn over its inventories of raw materials and finished stock quickly to avoid loss of value. The turnover necessary varies with the type of apparel made and with the particular segment of the consuming public for which the product is designed. There are two extremes in the type of apparel and the type of customer.

On the one hand, there is the company which concentrates on the "style market." It relies heavily on its ability to anticipate changes in fashions or to create the changes itself. Its product is relatively high-priced, with a substantial markup. This markup reflects the sales, advertising and merchandising efforts needed, as well as the risks and losses which are likely from bad guesses. If successful, such a company is less concerned with price competition, but style competition will force it to stay constantly alert to market trends. To survive, it will have to be dominated by a strong merchandising concept which will control both selling and production closely. Production costs will be secondary, but exact timing and flexibility in design, purchasing and production will be crucial.

At the other extreme, a company may make low-priced "staple" garments for the mass-market. Here, style awareness will be important but style changes in this market will be more gradual. However, price competition will be keen. It takes little capital to enter this branch of the apparel industry, so that many marginal companies will be competing in it. The struggle for existence among many companies will tend to force prices down to a subsistence level. The successful manufacturer in this field must control and minimize every item of production and overhead cost. Profits will depend on fractions of pennies. The organization will be dominated by a strong selling function and a strong though subordinate production function.

Despite the differences in markets, the basic controls needed over production and inventories will be very similar for both companies. This article will show how an apparel manufacturing company organizes its planning and control function, how the levels of various types of inventories are controlled, and how the accounting function keeps its own overall controls over inventories.

Organization for Inventory and Production Controls

Typically, the necessary records for controlling production and inventories will be kept under the supervision of a person called the Merchandise Manager (more likely in a company manufacturing apparel for the style market) or the Production Manager (in staple apparel manufacturing). This person will be responsible for deciding the overall quantities of raw materials to be purchased, subject to review of his policies by top management. The raw materials will consist of:

1. Piece goods—the basic cloth.
2. Trimmings—the linings, buttons, thread and any materials other than the basic cloth.

This person will also decide the overall quantities of various types and styles of garments to be produced, and when, based on sales trends. This person is in effect a buyer, with responsibilities similar to those of a buyer in a merchandising organization.

A Production Department will usually report to the Merchandise Manager or Production Manager. This department will keep records and will translate the overall plans into specific schedules for purchasing materials and manufacturing. It will keep records, decide on the breakdown of sizes to be produced, prepare schedules and follow up on progress.

Usually, the Production Department will not process customer orders or follow up to see that they are shipped on time. This is more likely to be the function of the Order Department. As part of its work, the Order Department will tabulate incoming orders by fabric,

pattern, style, color and size. The Production Department will use this tabulation as source material for its records.

Since the Production Department controls such a large part of the assets and expenditures of an apparel manufacturing company, a fraud in this department can have a major effect. If no independent records are kept, someone in this department can enter into collusion with a plant employee to conceal shortages. For this reason, the Accounting Department will usually keep an independent record of inventories. This record need not be detailed. It will show overall totals of various types of goods in raw material, in work-in-process and in finished stock. When a physical inventory is taken, this record will be used for the reconciliation. At this time, the Production Department's records will also be reconciled and adjusted to the physical count. The techniques for making reconciliations with inventories will be discussed later.

The Accounting Department's overall inventory record is frequently tied-in with an estimated cost system. If this is done, the Accounting Department has both a check on physical quantities and a measure of the effectiveness of each stage of manufacturing.

Control Over Raw Materials

The starting point for control over raw materials is the pre-season estimate of sales by general type of garment. This is worked out by the Merchandise Manager in collaboration with other department heads and top management. From this, considering both estimated sales and finished stock carried over from the previous season, he will develop an overall production plan. This, in turn, will be translated into quantities of piece goods and trimmings needed. As a last step, the Merchandise Manager will give effect to materials carried over and will work up an overall buying plan for the season. In practice, a company may plan some of its line to use up leftover materials, if this is possible.

Within the framework of the overall buying plan, a more specific short-range buying plan will be worked up for particular raw material items. This plan will keep the level of inventories at the most favorable point. This will be a compromise which considers:

1. The cost of carrying inventories.
2. The space available for storage.
3. The length of time required to get delivery on purchase orders. This will be a major factor in the apparel industry since raw material sources do not carry excess stocks. Commitments may have to be made well in advance of the time when apparel production is at its peak. Delivery time will vary with the particular item.
4. The relative risks involved in consumer style preferences. Certain fabric colors or patterns and certain trimmings types may themselves be subject to changes in public tastes. The unused materials, as well as excess garments made from them, may have to be sold at a loss.
5. The inventory backlog needed to keep the plant operating steadily at an economical level.

The short-range buying plan will be watched constantly as the manufacturing season progresses. Modifications will be made wherever possible as actual sales orders are tabulated.

Raw material recording will begin with the purchase order. This will be entered on a Material Available record for each style and color of piece goods and major trimmings.

This record will show:

Purchases:

- Date
- Purchase Order Number
- Quantity Purchased
- Quantity Received
- Balance on Order
- Quantity Ordered Cut
- Balance Available for Cutting
- Quantity Actually Cut
- Balance on Hand

Quantity received will be posted from a receiving report or from the vendor's packing slip, approved by the Receiving Department.

Deductions will be based on cutting orders rather than reports of quantities actually cut. This will give the Production Department an immediate picture of material still available for cutting orders. When actual cutting is reported, the difference between estimated and actual yardages cut will be used to adjust the Balance Available for Cutting.

Control over minor items of trimmings, such as buttons, thread, straps, bindings, material for inner construction, labels, boxes, etc., is usually less rigid, since these are relatively low in value. Perpetual inventories and availability records need not be kept if this would require a high volume of clerical work in relation to the value controlled. Instead, the plant may keep these items in bins which can be quickly inspected for items running low. In well-controlled operations, the Production Department will set up a reserve stock level and a standard ordering quantity for each item. The reserve stock will be kept in a separate section of the bin. When this stock is first used, the person withdrawing it will send a pre-typed "Traveling Requisition" to the Purchasing Department as an automatic request to buy the standard ordering quantity.

Beyond this, the Purchasing Department will keep a record of purchases of each item, and this will be scrutinized for propriety in relation to production levels.

Instead of keeping a stock of trimmings, some companies will order trimmings for each production lot. This may be done if trimmings cannot be used in other styles, or if production lots are large or if trimmings purchases can be obtained quickly. Buying for each production lot gives effective control if trimmings invoices are correlated with cutting orders by the Accounting Department.

On piece goods and major trimmings, the Accounting Department will make a periodic reconciliation of book balances with the physical inventory. The book balances will be based on the total yardages of each major type of material, considering:

Opening Inventory	xx
Purchases—from vendor invoices	xx
	—
Total Available	xx
Less: Actual Cuttings—from cutting reports (actual yardage consumed)	xx
	—
Computed Inventory	xx
	=

This reconciliation will give the Accounting Department final control to see that all material has been accounted for. Actual cuttings should come from cutting report copies received direct from the plant, not routed by way of the Production Department.

Control Over Production and Finished Stock

The starting point for control over production and finished stock is the pre-season manufacturing plan. This will provide for production of initial

stocks of all items which have been adopted for the line, subject to inventory carryovers.

As soon as the season begins, an Order Balance Record will be kept for each style, color, model, size, etc. This will be scrutinized constantly by the Merchandise Manager, to decide how much to produce of each style in the immediate future, in relation to stock and sales. He may also watch this record to see the general progress of shipments to customers in relation to deliveries from the plant.

This record will also be used by the Production Department to break down the Merchandise Manager's cutting order for a style into the quantities of each color, model and size to be produced. This department will also break down the basic cutting order into economical cutting and sewing lots, and will set up the manufacturing schedule.

The Order Balance Record (sometimes called a Status Record) will usually have the following information for each style, color, model and size:

1. *Sales Orders to Date.* This will come from tabulations of customer orders. Adjustments will be made for order cancellations and for returns of saleable merchandise.

2. *Production Commitments to Date.* This will come from a number of sources. It will consider inventory carryovers, both of work in process and finished goods. It will give effect to cutting orders, with adjustments for overcutting and undercutting, as well as for seconds produced.

3. *Balance Needed to Cut.* This will be the difference between "Sales Orders to Date" and "Production Commitments to Date."

4. *Actual Cut to Date.* This will consider opening inventory, both of work-in-process and finished goods. It will also reflect the quantities reported cut on cutting reports.

5. *Balance on Open Cutting Orders.* This will be the difference between "Production Commitments to Date" and "Actual Cut to Date."

6. *Delivered to Finished Stock to Date.* This will consider opening inventory of finished goods. It will also take into account the quantities reported completed on completion reports from the plant. Note that these completion reports should be ok'd for receipt by the finished goods stockroom.

7. *Balance in Process.* This will be the difference between "Actual Cut to Date" and "Delivered to Finished Stock to Date."

8. *Shipments to Date.* This will come from a tabulation of sales invoices and credit memos.

9. *Balance in Finished Stock.* This will be the difference between "Delivered to Finished Stock to Date" and "Shipments to Date."

The Order Balance Record outlined above is intended for use by a Merchandise Manager who wants to watch the progress of shipments. If he is not concerned with this, Shipments to Date and Balance in Finished Stock can be omitted.

This record can be used for control both over production and over inventories. However, if it does not include shipments and finished stock balance, a tabulation of unshipped customer orders at the inventory date will make it possible to reconcile the Order Balance

Record with a physical inventory of finished goods. The reconciliation may be made as follows:

Delivered to Finished Stock (6, above. Includes opening inventory)		xx
Less: Computed Shipments—Sales Orders to Date (1, above)	xx	
Less: Unshipped Orders	xx	
	—	
Computed Shipments		xx
		—
Computed Inventory		xx
		=

As a further control, the Accounting Department will make its own reconcilation of work-in-process and finished goods. This will be done from sources other than the Production Department records. The source documents will not have been routed by way of the Production Department. This reconciliation will be made for the total garments of each major category. It will show:

Opening Inventory of Work-in-Process	xx
Cuttings Reported—From Cutting Reports	xx
	—
Total Put into Process	xx
Less: Delivered to Finished Stock—from completion reports	xx
	—
Computed Work-in-Process Inventory	xx
	=
Opening Finished Goods Inventory	xx
Delivered to Finished Stock—from completion reports	xx
	—
Total Merchandise Available	xx
Less: Shipments—from sales invoices and credit memos (including samples, give-aways, no-charge shipments, etc.)	xx
	—
Computed Finished Inventory	xx
	=

This still leaves one link to complete the Accounting Department's chain of controls. This is the tie-in between fabric reported cut and garments reported cut. For this, it will be necessary for the Accounting Department to obtain an estimate of yards per garment of each category from the Production Department. This conversion factor will be applied to the garments reported cut of this category. The estimated yardage will be compared with the yardage reported cut. A reasonable overage or underage is to be expected, but a substantial underage will show either a shortage or a serious waste in cutting.

It is also worth noting that many apparel manufacturers will set up an Accounting Department control over direct labor to see that it bears a reasonable relationship to production. This control will be based on the estimated direct labor cost per garment for each stage of processing, in each garment category where this cost would differ. The Accounting Department will make periodic reconciliations of estimated and actual direct labor costs in relation to production. These reconciliations will show up inefficiency in labor utilization or padded payrolls, localized by department or operation.

Developing a Client's Insurance Program

By Sol Bergstein, C.P.A.

This paper presents a case study showing how an accounting firm reviewed the existing insurance coverage of, and assisted in the development of an insurance program for, one of its clients.
In addition to providing appropriate protection against existing risks, both a substantial refund and a reduction of premium cost were effected in the instant case.

I have found no better way to bring to a new client's attention the fact that a CPA can be of assistance to management, in addition to the usual auditing and tax service, than by demonstrating knowledge of insurance matters. Frequently, this knowledge results in substantial economies and, in many instances, in large insurance refunds; it thus furnishes proof that the accountant can be a versatile business adviser.

There are two major reason why the accountant should be well informed on insurance matters:

1. He is often called upon, in the regular course of an audit, to determine whether there is adequate insurance coverage to protect the client against insurable losses of all kinds.

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This paper was presented by Mr. Bergstein at a panel discussion on Management Advisory Services, which took place on June 5, 1956, at the Twenty-third Annual Conference of the Society, held at Pocono Manor Inn, Pocono Manor, Pa.

2. It is not uncommon for clients, especially operators of small businesses, to look to the accountant for competent advice on insurance matters.

For purposes of this paper, I shall outline briefly what actually was done to review the insurance coverage and assist in the development of an insurance program of a particular client. This work was undertaken as part of the initial audit, under the direct supervision of the partner in charge of the engagement.

The Insurance Audit

The insurance in force was analyzed under four major categories:

1. Compensation insurance.
2. All other general insurance.
3. The pension plan.
4. Life, group life, accident and sickness insurance.

Check lists were developed for each category listing the items to be reviewed thereunder and the exposures that could be protected against by insurance.

Compensation Insurance

The items covered by the compensation insurance check list were as follows: (I have used compensation insurance as the example because this is very frequently the largest single item of business insurance expense and will be encountered on practically every engagement).

(a) Premium Charged by Carrier

1. Was the total amount of the payroll per the audit report of the carrier in agreement with the client's payroll records?

2. Were salaries in excess of an average of $100 per week per employee eliminated?

3. Was the premium portion of overtime payments eliminated?

4. Were salaries of corporate officers included only to a maximum of $5,200, each, for the year?

5. Were salaries classified into proper rate categories?

6. Was the application of rates made in accordance with the terms of the policy?

7. Were all statutory discounts to which the client was entitled allowed by the carrier?

(b) Rate

1. Was the rate calculation sheet obtained from the Rating Board and checked?

2. Was a list of injured employees obtained from the carrier showing thereon the cost incurred or reserved for each one?

3. Who reviewed this list for reasonableness of costs or reserves?

4. Are the various classifications assigned by the Rating Board correct? Has the possibility been reviewed of obtaining different classifications with lower rates?

(c) Coverage—Carrier

1. If retrospective insurance is not carried, has it been considered?

2. If retrospective insurance is carried, does the client carry assessment insurance?

3. Have comparative costs been calculated for coverage from the State Fund, Mutuals, Stock Companies, Lloyds?

4. Has the advisability of self-insurance been considered? With coverage of excess limits? Or without coverage of excess limits?

(d) Other Points

1. Has a safety program been established? Who is responsible for it?

2. Are there facilities for first-aid treatments?

3. Are reports being made to the carrier only of reportable accidents?

4. Who attends compensation claim hearings before the Referee?

Other Insurance

Some of the more important points covered and the questions raised by the review of the three other categories of insurance were:

Fire and Use and Occupancy Insurance

The adequacy of coverage, utilization of reporting forms and coverage by carriers specializing in writing insurance on improved risks at reduced rates.

Liability Insurance

Coverage of all exposures, adequacy of limits and possible use of a comprehensive broad-form policy.

Pension Plan

Revision of the plan from one with individual annuity policies providing for death benefits to a self-administered plan for pensions with group life coverage for the death benefits.

Life Insurance

Desirability of insurance on the lives of the officers and key personnel with the client as beneficiary of the policies.

General

The possibility of paying premiums for liability and transit insurance based on sales to simplify record-keeping and premium computations.

Analysis of Accountants' Findings

After the accountants' findings were discussed informally with the client's Treasurer, who was responsible for insurance, a meeting was arranged to be attended by the client's insurance broker, the Treasurer and the accountants.

The following conclusions were reached at this meeting:

1. To retain the actuary recommended by the accountants to develop and submit costs of a self-administered pension plan with the identical benefits of the plan then in effect, and to compute the reduction in cost that would result from the adoption of the accountants' recommendations for modifying the plan.

2. To discuss with the compensation insurance carrier and the Rating Board possible reclassifications of payroll and rate reductions.

3. To centralize in one insurance brokerage office the responsibility for all policies written.

4. To obtain, through the insurance broker, costs of insuring uninsured hazards; to attempt to obtain fire and use and occupancy insurance from a carrier specializing in improved risks; and to obtain comparative costs, wherever possible, of insurance coverage written with mutuals, reciprocals, Lloyds, etc.

5. To hold meetings to review the findings of the actuary and insurance broker, so that final recommendations could be made to the client.

Report on the Insurance Audit

The accountants wrote a letter to the client in which the various problems and deficiencies developed by their review of the insurance were outlined. A report of insurance, in loose-leaf form, containing the following information, was prepared by types of coverage.

1. Insurance carrier.
2. Amount of coverage.
3. Rate.
4. Term.
5. Original premiums and changes thereto.
6. Description, in detail, of the coverage.
7. Description, in detail, of exposures not covered.
8. Problems for continuing review, and the reason, where applicable, for not covering certain exposures.

The accountants supplied a copy of their check-lists to the client who undertook to perform a similar annual review of the insurance. Various forms were designed by the accountants for the preparation of reports showing comparative costs of insurance by type and location, changes to buildings that might affect rates, accidents to employees and others, etc.

The immediate result of this review was a substantial reduction of costs and a refund of compensation insurance resulting from reclassifications by the Rating Board and the detection of incorrect exclusions from the payroll for compensation insurance purposes. In addition, the importance of insurance was brought home to management, written record was made of the client's policy on various types of coverage, and provision was made for regular review of the insurance.

The foregoing case-study pertained to a fairly large client. Effective service may be rendered in this field for smaller clients by (1) furnishing staff men with a check-list of the types of

insurance that clients should carry, (2) discussing and explaining the check-list and other insurance matters at staff meetings and (3) providing for the review of the staff's findings by a partner or experienced senior staff man.

The accountant can add to his knowledge of this important subject by reading some of the excellent texts that are available and by attending special college classes devoted thereto. He is, also, in the position of being able to learn from observing the practice of some of his clients. Certainly, competence in insurance matters will enhance the prestige of the accountant as a business adviser. It will also enable him to assist his clients in protecting themselves against insurable losses as well as to assist him in the handling of certain claims, such as for fidelity, fire, and use and occupancy losses.

Corpus Expenses—A Fiduciary's Dilemma

By Irwin M. Thrope, C.P.A.

Under the 1939 Internal Revenue Code, administration expenses charged to corpus often did not result in any tax benefit. The appropriate provisions of Subchapter J of the 1954 Code attempted to correct this shortcoming. However, in so doing, it created another problem for fiduciaries in so far as the conflicting rights of income beneficiaries and remaindermen are concerned. This paper points up the problem, and suggests an equitable solution thereto that should avoid a surcharge to the fiduciary upon the judicial settlement of his account.

The 1954 Internal Revenue Code enacted various far-reaching changes in the taxation of estates and trusts. Applicable to practically every trust, and of critical importance to many, is the treatment accorded those administration expenses which are paid out of corpus, while at the same time creating a situation fraught with strong possibilities of surcharge to the fiduciary upon the judicial settlement of his account.

Section 643 of the Code introduces a new concept, *distributable net income*. Basically this may be defined to mean the income, other than retained capital gains, reduced by the sum of the administration expenses charged to both income and corpus. In turn, the income beneficiary is required to include in his taxable income the amount distributed to him, but not in excess of the amount of "distributable net income." (See IRC, secs. 652 and 662.) It is therefore quite clear that the income beneficiary benefits taxwise from the fact that the fiduciary incurred expenses charged to corpus.

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Example 1:

Income—dividends, rents, etc.	$5,000
Expenses charged to income	400
Net income paid to beneficiary	$4,600
Expenses charged to corpus	500
"Distributable net income" (amount on which income beneficiary is taxed)	$4,100

In the above example, under the 1939 Code, the $500 of corpus expenses would not have benefited the income beneficiary and would have been wasted. It appears that the Congressional intent was to prevent this waste of expense[1].

[1] See Senate Committee Report No. 1622, 83d Congress, 2d Session, page 346: "The effect of this limitation is to give the beneficiary the benefit of certain statutory deductions such as trustee's commissions allocable to corpus, which are allowed to a trust under the 1939 Code but which may be wasted because the trust distributes all its income and thus has deductions in excess of gross income."

The Congressional intent may be further indicated by the statement made at page 341 where the discussion pertains to the $300.00 deduction granted a simple trust in lieu of the personal exemption: "Thus the deduction may offset small amounts of capital gains which are includible in the gross income of the trust but which, for purposes of the fiduciary's accounting, are allocable to the trust corpus."

The problem becomes difficult, however, where the fiduciary has capital gains which are allocated to corpus. In accordance with the mechanics of the Code, the corpus expenses inure to the benefit of the income beneficiary at the expense of the corpus (remainderman).

Example 2:

Same facts as in Example 1, plus $10,000 of taxable capital gains.

Accountingwise there would be income, as follows:

Income	$4,600
Corpus ($10,000 - $500)	$9,500

Taxwise there would be income, as follows:

"Distributable net income" (taxed to income beneficiary)	$ 4,100
Fiduciary's taxable income (before exemption)	$10,000

In the foregoing example, under the 1939 Code, the income beneficiary would have been taxed on the amount he received, $4,600, and the fiduciary would have been taxed on $9,500.

It thus becomes quite evident that Congress went astray attempting to correct a shortcoming of the 1939 Code. It has been suggested that the law be amended to provide that corpus deductions be applied first against taxable income inuring to the benefit of corpus and that any excess of such deductions then be applied in determining "distributable net income".[2]

Pending the enactment of this badly needed amendment, fiduciaries are faced with an immediate problem which, in the absence of agreement between the income beneficiary and the remainderman, can usually be resolved only by costly litigation. At this point the reader may be inclined to believe that the significance of this problem is slight, in view of the two examples furnished above. That the problem can be of major importance will be illustrated by the case cited below.

In *Estate of Eleanor Elkins Rice*[3] the Pennsylvania court was presented with the following facts for the year 1954:

Taxable interest and dividends	$396,000
Long-term capital gains (100%)	402,000
Expenses charged to income	154,000
Expenses charged to principal	202,000

In accordance with the current statutory provisions, the "distributable net income" amounted to $40,000, ($396,000 minus [$154,000 plus $202,000]), and the income beneficiary was taxable on this sum although he actually received $242,000 ($396,000 minus $154,000). On the other hand, the fiduciary was taxed on $201,000 (50% of the long-term capital gains), without any benefit of the expenses paid out of corpus. Accordingly, the fiduciary was required to pay a tax of approximately $100,000, whereas under the 1939 Code there would not have been any tax due by him.

Holding that the income beneficiary should reimburse corpus for the amount of the tax paid, Judge Taxis stated:

> "The question is whether it (the tax) should be paid by principal or income as a matter of Pennsylvania trust law. For purely arbitrary reasons, the I.R.C. of 1954 says that the tax . . . is payable by the trust, rather than by the income beneficiary.

[2] See Austin Fleming, **One Year of Trust Income Taxation Under The 1954 Code,** 33 Taxes 892 (1955), at page 894.

[3] Orphans Court of Montgomery County, Pennsylvania, decided February 24, 1956; reported in Philadelphia Legal Intelligencer of March 2, 1956, and Prentice-Hall Wills, Estates and Trust Service at ¶ 5532.

> "It must be remembered that this proceeding is one concerning the judicial settlement of accounts of fiduciaries being regulated, as it is, by the law of the *situs* of the trust. The Federal tax law does not determine the ultimate allocation of the taxes under Pennsylvania fiduciary law and . . . the equity of charging the trust tax to income is apparent. . . ."

It is interesting to note that although the income beneficiary was required to pay $100,000 to corpus, he still benefited to the extent of some $70,000. But for the $202,000 of corpus expenses, his tax would have been $170,000 higher; also, the fiduciary's tax was determined under the 25% alternative tax computation.

In his opinion Judge Taxis referred to an analagous case decided in New York[4] on the question of those administration expenses of an executor which may be deducted on either the estate tax return or the fiduciary income tax return. In that case it was held, that where certain corpus expenses were deducted on the income tax return instead of on the estate tax return (because of net tax savings), that income must reimburse principal to the extent of the resulting additional estate tax.

In each of the above cases, the equitable results are quite apparent. However, there may be certain problems in the determination of the adjustment to be made.

Where we are dealing with the problem of estate or income tax deductions, the computation is quite simple. The election to treat a deduction as an income tax item should result in a tax savings to income greater than the loss to corpus. Accordingly, income still benefits after reimbursing corpus in the amount of its loss. (Executors should be cautioned not to take income tax deductions at the expense of corpus unless there is a concurrent agreement with the income beneficiary to restore the resulting diminishment of corpus.)

On the other hand where we are involved with corpus expenses which automatically benefit income under the Code, there are other factors to be considered. It is to be pointed out that in the *Rice* case (*supra*) there would not have been any income taxable to the fiduciary if he had had the benefit of the corpus expense deduction. In that case, the income beneficiary also benefited in excess of the tax paid by the trust. Where the benefits to income are greater than the loss to corpus, income obviously should reimburse only to the extent of the corpus loss. It is quite possible to have a situation where the benefits to income are less than the loss to corpus. In such an instance it is submitted that equitable considerations would dictate that income should be charged only to the extent that it has been benefited. The remaining loss to corpus is a by-product of tax legislation not controllable by the fiduciary and therefore not his responsibility. However, the measurement of benefits to income may be a difficult problem involving a waiting period pending audit of the beneficiary's personal return.

It has been suggested that the amount of the tax adjustment be applied to reduce the amount of income distributed to the beneficiary, without any resulting reduction in "distributable net income".[5] It is my opinion that any adjustment that is made should not be reflected in the income accounts. Such an adjustment is merely a reduction of the fiduciary's tax based on an equitable correction of a statutory shortcoming.

It is indeed unfortunate that, short of litigation, this adjustment is subject to the willing cooperation of the income beneficiary.

[4] **In re Warms Estate,** 140 NYS (2d) 169.
[5] See Carter T. Louthan, **Accounting for Income Taxes as Between Income and Principal,** 35 The Trust Bulletin 19 (1956), at page 52.

1956 Legislative Changes in Fiduciary Commissions

By Lawrence Dick, C.P.A.

This paper presents a careful analysis of the recently-enacted radical changes with respect to commissions allowable to executors, administrators, trustees, guardians, and committees of incompetents.

The legislative session recently held at Albany enacted two bills of interest to those dealing with estates and trusts, both of which have been signed into law by the Governor, and both of which revise very radically the commission structure regulating fees paid to executors, administrators, trustees, guardians and committees of incompetents. Governor Harriman signed the first of these bills (dealing with fees of executors, administrators and guardians) on March 6. The second bill (dealing with fees of trustees) was approved on April 21.

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This paper was presented by him at a technical meeting of the Society held under the auspices of the Committee on Fiduciary Accounting at the Engineering Societies Building on April 30, 1956.

Receiving and Paying Commissions for Executors, Administrators, Guardians, and Committees

The increased fees for receiving and paying to be paid to executors, administrators, and guardians are as follows:

First	$ 10,000	4%
Next	290,000	2½%
Over	300,000	2%

A comparison of rates under the new law[1] and the old law, discloses that for very small estates, there may be a decrease in commissions. The break-even point comes at the level of $3,333.25 when both the new and old laws yield the same fees. Above this level the new law will result in higher fees until the maximum increase of the new rates over the old of $1,630 is reached at the $300,000 level.

You may recall that under the old law the short-cut computation for estates over $50,000 was 2% plus $20. Under the new law the short-cut computation will be for estates over $300,000 and the formula will be 2% plus $1,650.

In addition to the change in rates, it is also important to bear the following provisions in mind:

The effective date of this statute is July 1, 1956.

Executors, administrators or guardians acting prior to July 1, 1956, are

[1] Laws of 1956, Chapter 54 (amending Section 285, Surrogate's Court Act).

Size of Estate	Old Law		New Law	
$ 1,000.00	5%	$ 50.00		$ 40.00
2,000.00		100.00		80.00
3,333.25		133.33	4%	133.33
5,000.00		175.00		200.00
10,000.00	2½%	300.00		400.00
20,000.00		550.00		650.00
22,000.00		600.00		700.00
30,000.00		720.00		900.00
40,000.00	1½%	870.00	2½%	1,150.00
50,000.00		1,020.00		1,400.00
100,000.00		2,020.00		2,650.00
250,000.00		5,020.00		6,400.00
300,000.00	2%	6,020.00		7,650.00
500,000.00		10,020.00		11,650.00
1,000,000.00		20,020.00	2%	21,650.00
etc.		etc.		etc.

Comparison of Section 285 Commissions

entitled to commissions under the new rates except in the following instances:

a) If prior to July 1, 1956, the executor, administrator, or guardian has been allowed or has retained both receiving and paying commission (at the old rates) on any item of principal or income, no further commission shall be paid with respect to such item.

b) If prior to July 1, 1956, the executor, administrator, or guardian has been allowed or has retained a receiving commission (at the old rates) on any item of principal or income, no further receiving commission shall be paid with respect to such item.

With respect to committees of incompetents, Section 1376 of the Civil Practice Act provides that the committee of the property of an incompetent person is entitled to the same compensation as an executor or administrator. The amendments to Sec. 285, therefore, will necessarily affect the fees paid to committees of incompetents.

Inserted into the text of Section 285 for purposes of clarification is a clause dealing with real estate management commissions to the effect that only one 5% management commission shall be allowed regardless of the number of executors, administrators or guardians. This merely formalizes the rule that has been almost universally applied heretofore by the various Surrogates Courts in New York State. This provision parallels one which has heretofore been included in Sec. 285a (dealing with trustees commissions) except that the management commission rate in the case of trusts is 6%.

Trustees' Commissions—Testamentary and Inter Vivos Trusts

Since both amendments were enacted in parallel form, the discussion which follows applies equally to trustees of both testamentary and inter vivos (or living) trusts.[2]

[2] Laws of 1956, Chap. 931 (amending Section 285a, Surrogate's Court Act, Dealing with Testamentary Trusts, and Section 1548 of the Civil Practice Act, Dealing with Inter Vivos Trusts).

The new law completely revises the fee system for trustees of wills of persons dying after August 31, 1956, and of living trusts established after August 31, 1956. For trusts created on or before August 31, 1956, the same basic fee pattern has been retained, but the rates have been increased. Each of these is separately discussed below.

I. Transition Fees for Trusts Created On or Before August 31, 1956[3]

The increased schedule of fees for such trusts follows:

	Old Law	New Law
Receiving and Paying Commission:		
First $ 2,000	6 %	6 %
Next 10,000	3 %	3 %
Over 12,000	2 %	2½%
Annual Income Commission:		
First $ 2,000	6 %	6 %
Next 10,000	3 %	3 %
Over 12,000	2 %	2½%
Annual Principal Commission:		
First $ 50,000	$1.00 per M*	$1.75 per M*
Next 350,000	.45 " "	.75 " "
Over 400,000	.30 " "	.50 " "
	* Or major fraction thereof	
Maximum Annual Principal Commissions for Life of the Trust:		
One trustee	3 %	5 %
Two trustees (each)	2½%	4 %
Three or more trustees (each)	2 %	3 %

In addition to the changes in rates, it is also important to bear the following provisions in mind:

1. The foregoing revised rates will apply for trust years ending on or after July 1, 1956.

2. The statute clarifies the situation with respect to successor co-trustees. Previously, some jurisdictions (although not all) had held that a successor co-trustee had to compute his initial annual principal commissions on a twelve-month basis beginning with the date of his qualification, even though the trust year or that of his co-trustees might be different. If such successor co-trustee wished to establish a uniform accounting year for himself and his co-trustees, it was sometimes held that he had to forego the initial annual principal commission for the short period.

This situation has been clarified by a provision in the new statute which provides for proration of annual principal commissions payable to trustees for first or final periods of less than twelve months.

3. The statute simplifies the computation of the annual principal commission by providing that the value of any principal asset when received by the trust shall also be its presumptive value for the successor trustee or co-trustee,

[3] Surr. Ct. Act, Sec. 285-a.

rather than a newly appraised value on the date of qualification by the successor trustee or co-trustee.

4. Under the old law, the right to multiple income commissions by co-trustees was fixed by reference to the gross value of the principal of the trust accounted for. If this gross value was $100,000 or more, then multiple commissions (up to a maximum of three) were allowed for both receiving and paying commission and for the annual income commission.

The statute has been amended so that the right to multiple annual income commissions is determined in the same manner as annual principal commissions, i.e., by reference to the value of the principal of the trust at the end of the period for which annual income and principal commissions are payable.

5. The test with respect to multiple commissions for trusts in perpetuity (charitable trusts) has likewise been changed. Heretofore, in the case of charitable trusts, multiple commissions were allowed where the value of the principal of the trust accounted for was $100,000 or more.

The new law provides that for trusts in perpetuity, multiple commissions shall be allowed if the income is $4,000 or more for the trust year. Further, the amendment provides that up to three commissions shall be allowed for charitable trusts created prior to April 1, 1948, and up to two commissions shall be allowed for charitable trusts created on or after April 1, 1948.

6. With respect to commissions paid for trust years ending prior to July 1, 1956, such commission computations under the previous law will be left undisturbed. This applies to:

a) Receiving and paying principal commissions

b) Receiving commissions

c) Income commissions

II. Revised Fees for Trusts Created After August 31, 1956[4]

With respect to trustees under wills of persons dying after August 31, 1956, and of trusts established after August 31, 1956, a drastically revised commission pattern has been established, as follows:

1. One flat commission of 1% for *paying out* all sums of money constituting principal, regardless of the size of the trust. This will be awarded on the settlement of the account only to the trustee who acts at the time of such distribution.

2. The chief source of trustees' commissions will be an *annual* commission, computed as follows:

First $ 50,000 of principal	$5.00	per M	or	major	fraction
Next 450,000 "	2.50	"	"	"	
Over 500,000 "	2.00	"	"	"	

These annual commissions are in no way determined by the income collected, but rather by the value of the principal at the end of the period being accounted for. The annual commission is split down the middle so far as charges against principal and income are concerned, being charged one-half to income and one-half to principal. It is contemplated, however, that this arrangement may not be desirable in all cases, because the statute reads "unless the will otherwise *explicitly* provides, the annual commission shall be payable

[4] Surr. Ct. Act, Sec. 285-b.

one-half from income and one-half from principal" (emphasis added by author). There probably will be considerable re-examination and redrafting of wills of living testators to determine the effect of this provision on contemplated testamentary trust plans.

In order to retain the annual commission paid out of income, the trustee must furnish to each income beneficiary a statement showing receipts and disbursements of income during the trust year, the commission retained out of income for that trust year, and the basis of calculation.

To retain the commission paid out of principal, the trustee must furnish to each principal beneficiary who shall so request a statement showing the principal assets at the end of the year and the commission retained out of principal.

As under the old law, the trustee may retain income commissions only out of income received in the trust year for which commissions are sought. If insufficient income is retained for this purpose, the commission will be deemed to have been waived.

A very serious problem will arise in those instances where the trust income is less than the one-half of the annual commission which is payable out of such income. This will occur, for example, if a substantial portion of the trust *res* consists of unproductive real or personal property. The result could be a reduction of the annual commission for a particular year by as much as 50%, if the language of the statute is strictly construed.

The section of the statute dealing with this matter reads as follows:

> ". . . . commissions payable for any given trust year shall be allowed and retained only from income derived from the trust during such year and shall not be supplied from income on hand in respect of any other trust year." [5]

If the Surrogates should construe this language liberally, it may be that an apportionment formula will develop similar to the one presently utilized when unproductive property is sold by a trust.

However, it would seem that the wisest course would be to avoid speculation over future judicial interpretation by including in every will containing a trust provision, a clause covering the contingency of insufficient income out of which to pay the one-half of annual commission chargeable against income. For example, in such case, it would appear to be equitable to permit the deficiency in the annual commission due to insufficient income, to be paid out of principal, possibly with a further proviso that such deficiency shall be recouped, in whole or in part, out of future trust income.

Multiple Commissions

Multiple paying commissions are allowed where the value of the principal accounted for is $100,000 or more, and multiple annual commissions are allowed where the value of the principal at the end of the period for which an annual commission is payable is $100,000 or more.

This section of the new statute contains provisions which parallel those previously mentioned with respect to proration of the annual commission for initial and final accounting periods shorter than twelve months and presumptive values of principal assets.

Charitable or Perpetual Trusts

With respect to charitable trusts (or trusts in perpetuity) multiple commissions are allowed where the income for the trust year is $4,000 or more, the

[5] Surr. Ct. Act, Sec. 285-b 4.

Size of Trust	Receiving and Paying Commission	Annual Income Commission	Annual Principal Commission	Total Annual Commissions	Total Commissions For Duration of Trust: One Year	Five Years	Ten Years	Twenty Years	Thirty Years
I—Old Law Trusts:									
50,000	$ 1,180.00	$ 120.00	$ 50.00	$ 170.00	$ 1,350.00	$ 2,030.00	$ 2,880.00	$ 4,580.00	$ 6,280.00
100,000	2,180.00	180.00	72.50	252.50	2,432.50	3,442.50	4,705.00	7,230.00	9,755.00
200,000	4,180.00	300.00	117.50	417.50	4,597.50	6,267.50	8,355.00	12,530.00	16,705.00
500,000	10,180.00	580.00	237.50	817.50	10,997.50	14,267.50	18,355.00	26,530.00	34,705.00
750,000	15,180.00	780.00	312.50	1,092.50	16,272.50	20,642.50	26,105.00	37,030.00	47,955.00
1,000,000	20,180.00	980.00	387.50	1,367.50	21,547.50	27,017.50	33,855.00	47,530.00	61,205.00
II—Transition Trusts Under New Law:									
50,000	1,370.00	120.00	87.50	207.50	1,577.50	2,407.50	3,445.00	5,520.00	7,595.00
100,000	2,620.00	180.00	125.00	305.00	2,925.00	4,145.00	5,670.00	8,720.00	11,770.00
200,000	5,120.00	300.00	200.00	500.00	5,620.00	7,620.00	10,120.00	15,120.00	20,120.00
500,000	12,620.00	620.00	400.00	1,020.00	13,640.00	17,720.00	22,820.00	33,020.00	43,220.00
750,000	18,870.00	870.00	525.00	1,395.00	20,265.00	25,845.00	32,820.00	46,770.00	60,720.00
1,000,000	25,120.00	1,120.00	650.00	1,770.00	26,890.00	33,970.00	42,820.00	60,520.00	78,220.00
III—New Trusts (created after August 31, 1956):									
	Paying Commission			Annual Commission					
50,000	500.00			250.00	750.00	1,750.00	3,000.00	5,500.00	8,000.00
100,000	1,000.00			375.00	1,375.00	2,875.00	4,750.00	8,500.00	12,250.00
200,000	2,000.00			625.00	2,625.00	5,125.00	8,250.00	14,500.00	20,750.00
500,000	5,000.00			1,375.00	6,375.00	11,875.00	18,750.00	32,500.00	46,250.00
750,000	7,500.00			1,875.00	9,375.00	16,875.00	26,250.00	45,000.00	63,750.00
1,000,000	10,000.00			2,375.00	12,375.00	21,875.00	33,750.00	57,500.00	81,250.00

Comparison of Maximum Trustee's Commissions

(Assuming Single Trustee and 4% Return)

multiple commissions being limited to two as under the present law. A further change has been made with respect to trusts in perpetuity as follows:

Under the old law, no receiving and paying commissions are permitted at all. The new law provides for the allowance of a paying commission of 1% where distribution of trust assets is actually made, except where such distribution is to a charity or for charitable purposes. These commissionable distributions would be to "private" beneficiaries.

Realty Management Commission

For ordinary trusts the rule that one 6%-of-gross-rents management commission is allowable to trustees is continued. The rule that net rents rather than gross rents shall be used in computing annual income commissions is inapplicable, since income no longer serves as a basis for computing commissions. For trusts in perpetuity, however, this rule still applies.

Accumulations of Income

One entirely new concept has been introduced to cope with a special situation created by this new commission system. In those situations where accumulation of income is permitted (as during the minority of the income beneficiary), the commission system heretobefore discussed does not allow for commissions on income resulting from investments of accumulated income. In such instances, the trustee is allowed a commission on accumulated income, including income derived from the investment of accumulated income, at the rate of 2% of the first $2,500 of accumulated income distributed during the administration of the trust and 1% of all such income in excess of $2,500.

* * *

A study of the revised fee structure above outlined indicates that the new system will prove more liberal only in those cases where the duration of the trust continues for long periods of time. There is one great advantage, however, even in the case of a trust for a shorter term, in that the commissions will be paid to trustees more currently. The accompanying schedule shows a comparison of the fees payable to trustees for varying durations.

Recent Changes in the New York State Unemployment Insurance Law

By Gustav Mattersdorf, C.P.A.

After reviewing the salient features of certain changes in the New York State Unemployment Insurance Law enacted in the 1954 and 1955 legislative sessions, this paper analyzes and discusses the new 1956 amendments of interest to employers and accountants.

Before discussing the amendments to the New York State Unemployment Insurance Law passed by the 1956 Legislature it may be well briefly to review the salient features of other recent changes enacted in the 1954 and 1955 legislative sessions.

1954 and 1955 Amendments Reviewed

You may recall that in 1954 the law was amended to provide that beginning with January 1, 1955, employers, regardless of the number of employees, would become subject to the law if they were subject to the Federal Unemployment Tax Act. The revision of the Federal Unemployment Tax Act to include employers of four or more starting with January 1, 1956, instead of eight or more as theretofore, accordingly has a direct bearing on the New York Law.

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This paper was presented by him at a technical meeting of the Society held on April 9, 1956, under the auspices of this Committee, at the Engineering Societies Building in New York City.

In the 1955 legislative session the Unemployment Insurance Law was amended to provide that beginning with January 1, 1956, an employer would become subject to the law if he employed three or more persons in covered employment on any single day. The same amendment provided that beginning with January 1, 1957, employers would become subject if they employed two or more on any single day. The significance of these changes is not merely in the reduction of the number of employees required to render employers subject to the law, but also in that the concept of the fifteen or more days was dropped. You will recall that prior to this year an employer, in order to become subject on other than a voluntary basis, had to have four employees on any fifteen days, his subjectivity being retroactive to the first of such fifteen days. Now, a single day of employment of three or more (or, beginning with January 1, 1957, a single day of the employment of two or more) will render an employer subject to the law. Of course, as indicated above, beginning with January 1, 1955, an employer with even only one employee in New York would be subject to the New York law if he was subject to the Federal Unemployment Tax Act because of additional employees in other States.

There is, however, an exception to the concept of three or more (or, next year,

two or more) and that is with respect to employees in personal or domestic service in private homes. As to them, four or more are still required but beginning with January 1, 1956, the fifteen-day provision was dropped. Accordingly, if a person employs four or more domestics on any single day he will thenceforth become subject to the law. As perhaps an extreme example, if an employer who has only one domestic has a party at his home and employs three or more in temporary help he will become subject to the law, having had four employees on one day.

Now just a word regarding termination of liability. The law was amended in 1955 to provide that beginning with January 1, 1956, if an application to cease to be subject to the law is filed in the fourth quarter of the year, subjectivity will cease the following January 1st, provided the employer had no more than one employee on any day throughout the complete calendar year in which the application is filed and provided also that the employer was not subject to the Federal Unemployment Tax Act for the said calendar year. If the application to cease is filed in any quarter other than the fourth, the employer's subjectivity will cease on the first day of the next quarter provided he had no more than one employee on any single day in the whole previous calendar year as well as in all the calendar quarters of the current year, including the quarter in which the application is filed, and provided also that he was not subject to the Federal Unemployment Tax Act in both the previous and the current years.

It cannot be stressed too strongly that if an employer is or becomes subject to the law he should register with the Division of Employment without delay. Apart from other considerations, if he waits until his subjectivity is uncovered, as it generally is in due time, he would not only have to pay all contributions due for the full statutory period plus interest at the rate of three-quarters of one per cent per month, but he would be obliged to pay such contributions at the maximum rate without the benefit of any possible experience rating because his reports will not have been filed on time as will be explained later. The accumulated amount, therefore, could easily place the employer in an embarrassing financial position. It should also be noted that the amounts due for unemployment insurance contributions and interest cannot be compromised, since there is no authority under the law to compromise or reduce in any manner any contributions or interest found to be due.

1956 Amendments

Proceeding now to the 1956 amendments, it should be explained first of all that as of this date, April 9th, none of the bills has as yet been signed by the Governor, but there is every reason to expect that they will be approved since they were all departmental measures and recommended by the State Advisory Council.[1]

Definition of Capital Stock as Used in Connection with "Principal Stockholders"

The first bill concerns itself with "principal stockholders" which has been in the law in one form or other since 1951. You may recall that as it now stands, the law provides that contributions are not to be paid on compensation paid by a corporation to employees who are principal stockholders unless such compensation is taxable under the Federal Unemployment Tax

[1] All the bills referred to have since been approved.

Act. The law defines a principal stockholder as one who owns twenty-five per cent or more of the capital stock of the corporation. Heretofore, no distinction was made between different classes of capital stock and where several classifications of stock were involved it was sometimes difficult to determine whether or not an employee or an officer was or was not a principal stockholder. The new amendment defines capital stock to mean only the voting stock of the corporation issued and outstanding and further provides that in the event several classes of stock had been issued which are accorded different voting rights per share, the status of an employee as a principal stockholder is to be determined by the percentage of the total vote of all issued and outstanding voting stock represented by his shares. In other words, the ratio is determined by the number of votes. This amendment will become effective July 1, 1956.

Uniform Two-Year Limitation for Corrections or Modifications of Experience Rating Factors

The second bill which I should like to discuss is directed toward what may be considered an inequity in the current law. As you may know, the status of the Unemployment Insurance Fund on July 1st (called the computation date) determines which group of contribution rates are to apply the following year to employers who qualify for experience rating. The specific rate for each qualified employer is based on his individual experience as a member of the system. This experience is reflected in what is known as the "employer's experience factor" which, in turn, is a composite of four different factors, namely, a "benefit factor," a "quarterly factor," an "annual factor" and an "age factor." Without going into detail, it may be said that such items as total remuneration, taxables wages, timely contribution payments, experience rating charges for benefit payments to former employees and length of subjectivity play a part in the computation of the various factors.

The present law provides that for the purpose of a *decrease* in an employer's contribution rate, corrections or modifications of any of the factors shall not be taken into account unless they are established on or before the "effective date" (December 31st prior to the year to which the rate applies). This gave the employer only six months from the computation date, July 1st, to establish any corrections or modifications necessary for a decrease in his rate for the following year. On the other hand, the law allows four years from the effective date for the establishment of any corrections and modifications which would result in an *increase* in an employer's experience rate, except that there is no time limitation where fraudulent reports were filed. This created a double standard which the new amendment seeks to eliminate by providing for a uniform two-year limitation for corrections or modifications of experience rating factors, irrespective of whether they result in upward or downward revisions of experience rates, the time again being determined in each case from the effective date, December 31st. The exception with regard to fraudulent reports remains in the law. This will likewise become effective July 1, 1956.

Extension of Experience Rating

Before taking up the next amendment, it is felt that a bit of background would be helpful. As you are aware, the Federal Unemployment Tax Act (now Chapter 23 of the Internal Revenue Code of 1954) imposes on employers of four or more (formerly eight

or more) an excise tax of three per cent on the first $3,000 of each employee's remuneration. Against this tax, employers are permitted to credit the amount of contributions paid under the Unemployment Insurance laws of States which meet certain requirements as set forth in Section 3304 of the Act. Obviously all States make sure that their laws comply with the Federal requirements to avoid subjecting employers in such States to double taxation. Under another provision of the Act, employers are permitted a further credit corresponding to the savings in Unemployment Insurance contributions resulting from experience rating provided the State's law meets certain other requirements as set forth in Section 3303 of the Act. If it were not for this provision in the Federal law, employers subject to the Federal Act would derive no benefit from experience rating since the savings accruing from lower contribution rates would have to be paid to the Federal Government. For this reason, also, all States are very careful to make sure that the experience rating provisions of their laws meet the Federal requirements.

Until 1954 the Federal Unemployment Tax Act included as one of the requirements for allowance of the additional credit a provision that employers must have at least three consecutive years of experience to qualify for reduced contribution rates. State laws which incorporated experience rating provisions accordingly followed suit. In the latter part of 1954 the Act was amended by Congress to sanction the allowance of reduced contribution rates to employers who had at least one year of the required experience immediately preceding the computation date. A bill to take advantage of the enabling provisions of the Federal law was introduced in the 1955 Legislature. After the bill had passed, the United States Department of Labor indicated that serious questions of conformance with the Internal Revenue Code existed. Although it was in technically correct form, the bill as passed had to be disapproved since the Legislature had already adjourned.

The 1956 enactment meets the objections raised by the Federal Bureau of Employment Security. Following is a comparison of the requirements for experience rating qualification between the old and new laws:

1. Under the old law an employer had to have *fourteen* quarters of liability prior to the computation date, July 1st. Under the new law he has to have *five* quarters of subjectivity prior to the computation date. Strictly speaking, the amendment refers to experience with respect to unemployment throughout not less than four consecutive completed calendar quarters immediately preceding the computation date, but in order to have had such four quarters of experience, the employer must have been subject during at least a part of the immediately preceding quarter. In other words, an employer who becomes subject in the second quarter can qualify for an experience rating computation as of July 1st of the following year.

2. The old law also provides that the employer must have paid some remuneration in the *calendar year* preceding the computation date, whereas the new law provides that he must have paid some remuneration in the *fiscal year* preceding the computation date, namely from July 1st of the previous year to June 30th of the current year.

3. The old law provides that the employer must have filed all contribution reports for the required *fourteen quarters* on or before September 30th after the computation date, whereas the new

law provides that he must have filed all required contribution reports for the *three fiscal* years preceding the computation date on or before September 30th following the computation date.

4. There are no changes in the provisions barring qualification if any negative balance in an employer account was transferred to the General Account in the twelve consecutive calendar quarters preceding the computation date, or if any balance in a lapsed employer account was transferred to the General Account.

This amendment will likewise become effective on July 1, 1956.

Requirement to "File All Reports" Basic to Qualification for Experience Rating

At this point, I should like to clarify a matter which has been the subject of fairly widespread misunderstanding. You will note that in order for an employer to qualify for experience rating under both the old and new law, he must have "filed all reports" which is certainly not the same as saying that he must have paid all contributions. My reason for stressing this is that every so often we come across an employer who indicates that he didn't file his reports because he didn't have the money to pay the contributions. Thereby he eliminates any possibility of a more favorable contribution rate for the ensuing year. This was one of my reasons for underscoring the importance of prompt registration with the Division of Employment in th event of subjectivity. If there is any question as to his status, an employer should contact the Division for a determination.

Timely Payment of Contributions Necessary to Assure Lowest Contribution Rate

There is, however, a further facet of experience rating to bear in mind. Although an otherwise qualified employer's contribution ,rate for the following year will be computed as of July 1st provided the required reports were filed on time as indicated above, it should be noted that the amount in the employer's account on July 1st, the computation date, is a significant factor in determining the said rate. You will recall that to facilitate the computation of individual contribution rates, an account is maintained with each employer in the system. To this account are credited all contributions paid (provided they are paid on time as will be explained shortly) and to it are debited such benefit payments to former employees as are chargeable to the employer in accordance with the procedure set forth in the statute. Employers have no vested rights whatever in any credit balances in their accounts nor are they assessable with any debit balances. The importance of the amount in the employer's account derives from what is known as the *"employer's account percentage"* which is defined as the credit balance in the employer's account on July 1st stated as a percentage of his total payroll for the last calendar year. The employer's benefit factor, which is generally the most significant factor in determining his contribution rate, is dependent on his account percentage. It is accordingly to the employer's distinct advantage to have his account reflect the maximum balance on the computation date. To achieve this, it is not enough that all the contributions due have been paid. The law requires that unless such payments are made within sixty days of the due date they are not to be credited to the employer's account but to what is known as the General Account, except if the payments were made prior to determination and demand by the Commissioner. Payments credited to the General Account are not and cannot be

included in computing the employer's account percentage or contribution rate. It is important, therefore, not only that reports be filed by September 30th to qualify an employer for experience rating, but also that all contributions be paid within sixty days of their respective due dates (January 31st, April 30th, July 31st and October 31st) in order to assure the maximum account percentage and thereby the lowest contribution rate.

It should also be noted that if an employer is disqualified because of failure to file delinquent reports by September 30th, he will have another opportunity to qualify the following year. On the other hand, any contribution payments not credited to his account because of late payment as mentioned above can never be used for experience rating purposes. Moreover, a timely payment could very well avoid a negative balance on a subsequent computation date. As indicated above, such a negative balance would disqualify an employer from experience rating for a full three years.

It should hardly be necessary, therefore, to dwell any further on the advantages to employers of timely payments except, perhaps, to point out that the sixty-day period of grace does not apply to the assessment of interest.

Relief of Certain Employers from Payment of Subsidiary Contributions

Before discussing the next amendment, I believe it would be well to examine the General Account in somewhat greater detail. The Unemployment Insurance Fund, to which employers pay their contributions, comprises a large group of individual employer accounts and one General Account. The purposes of the General Account are:

1. To absorb charges for benefit payments which are not chargeable to a particular employer. As a simple example, if a claimant who had only twenty weeks of covered employment in his base period receives twenty-six weeks of benefits, the last six weeks would be charged to the General Account.

2. To absorb "negative" balances in employer accounts. The law requires that on each July 1st all "negative" or debit balances in individual accounts be transferred to the General Account so that no employer account starts with a debit balance on July 1st.

3. To be credited with late contribution payments as previously detailed.

4. To receive transfers of balances of lapsed employer accounts, i.e., where no wages for employment in New York have been paid during four consecutive calendar years.

5. To be credited with earnings on moneys in the fund, and

6. To be credited with annual contributions on students' and dismissal wages.

It should be explained that interest and penalties collected are credited to a special fund separate and distinct from the Unemployment Insurance Fund.

As it now stands, the law provides that if on any June 30th the General Account balance is less than 1½% of the total payrolls of all employers in the preceding calendar year, a subsidiary contribution over and above the regular contribution is to be assessed the following year against *all* employers liable for contributions. The subsidiary contribution rate may be anywhere from one-tenth of one per cent to one per cent, depending on the General Account percentage. The specific rate is determined from a table in the law and applies uniformly to all employers.

The amendment relieves from subsidiary contributions all employers subject during less than the five quarters pre-

ceding the computation date on the theory that such employers could not have contributed to the insufficiency of the General Account. The result is that only those employers whose period of subjectivity is sufficient to qualify them for experience rating would be exposed to subsidiary contributions. This does not mean that only qualified employers would be liable for subsidiary contributions since, it will be remembered, employers can be disqualified from experience rating for reasons other than an insufficient period of subjectivity. This amendment becomes effective upon approval.[2]

Although no subsidiary contributions have heretofore been necessary it is now quite evident that the General Account percentage on June 30, 1956, will be such as to require a subsidiary contribution of three-tenths of one per cent in 1957. The amendment will serve to exempt from such contribution employers whose subjectivity dates from the third quarter of 1955 or thereafter.

Treatment of Federal Funds Transferred to New York State Pursuant to the Reed Act

The final amendment which I should like to discuss also requires a bit of background.

At the time the State-Federal Employment Security Program was initiated it was generally supposed that all of the taxes collected under the Federal Unemployment Tax Act were to be used to finance the administrative expenses of the program. However, over the years it developed that after appropriations for this purpose a surplus remained in the General Fund of the Federal Government. In 1954, Congress enacted the Employment Security Financing Act of 1954, commonly known as the Reed Act, which earmarks taxes collected under the Federal Unemployment Tax Act. It provides that the excess of collections over and above administrative expenditures is to be automatically appropriated and transferred to the Federal Unemployment Trust Fund. Of such excess, up to $200 million is set aside in a "Federal Unemployment Account" for the purpose of advances to States for benefit payments. Any excess above the $200 million as of any July 1st is to be transferred to the credit of the States' accounts in the Unemployment Trust Fund. Each State's share is based upon the ratio between the covered payrolls in the particular State and the total of all covered payrolls in all the States.

The Reed Act provides that the money so transferred may be used only for payment of unemployment benefits and, subject to certain limitations, for administrative expenses of the States' Employment Security Programs. Among other conditions, specific legislative appropriation, both as to amount and purpose, is required where any of the money is to be used for administrative expenses.

The first Reed Act funds will be available for distribution as of July 1, 1956. It is expected that the surplus will be about $32 million and that New York's share will be between $3 and $4 million.

Essentially, the purpose of the amendment to the New York Law is to implement the Reed Act. It provides that the moneys transferred to this State's account under the Act shall be part of the New York State Unemployment Insurance Fund, that they are to be credited to the General Account and that the General Account is to be debited in the event of any legislative appropriation

[2] This bill was approved on April 10, 1956.

for administrative expenses. The amendment will become effective upon approval.[3]

It may be interesting to note that since the Reed Act money will be transferred as of July 1st, the computation date, it may become a factor in determining the contribution rates for the following year because of its effect on the "Size of Fund Index." This is merely the lesser of the percentages obtained by dividing the moneys in the New York State Unemployment Insurance Fund on July 1st alternately by the total of all payrolls for the preceding calendar year and by the average of the totals of all payrolls for the preceding three calendar years. It is this index which determines which of the eight experience rate columns incorporated in the law is to be used for the following year. For example, the 1956 contribution rates for employers who qualified for experience rating range between 0.5% and 2.7% as set forth in the sixth column because the latter comprehends the size of fund index computed on July 1, 1955.

Since the Reed Act money is to be credited to the General Account, it could also affect subsidiary contributions. Apparently, however, the effect would not be immediate since the need for and extent of subsidiary contributions is based on the status of the General Account on June 30th whereas the transfer under the Reed Act is not made until July 1st.

* * *

This sums up the amendments which may be of interest to employers and accountants. I hope this exposition has contributed to a better understanding of the law as well as of some of the problems which confront its administrators. If I have elaborated a bit, it is because I believe accountants are also interested to some extent in the background and ramifications of the legislation which may affect their clients and with which they may from time to time be called upon to deal.

[3] This bill was approved on April 20, 1956.

New York State Tax Forum

Conducted by Benjamin Harrow, C.P.A.

Limitation Period Under Article 9A . . .
Taxable Year of a Partnership.

Limitation Period Under Article 9A

Section 212(1) of Article 9A reads in part as follows: "The Tax Commission shall audit and state an account within five years *after a report is filed for any tax imposed by this article* . . ." If the Tax Commission takes no action within five years, the report is deemed audited and stated and "shall be final for all purposes."

Is the five-year period affected by a report of changes in net income resulting from changes made by the federal government? Section 211(3) of Article 9A requires a taxpayer either to report such change within 90 days or on its next report, "and shall concede the accuracy of such determination or state wherein it is erroneous."

Consider this situation: The federal government increases the net income of a corporation for the year 1945 in 1947. On its next report to the State Tax Commission filed on May 15, 1948, the taxpayer reports the action of the federal government and states in detail the changes resulting in the increased income. Suppose the Tax Commission takes no action until 1954. Is it barred by the five-year statute of limitation from assessing and collecting an additional tax?

Article 600 of the Regulations provides that a change in federal net income must be reported to the Tax Commission, and then adds this sentence, "*At any time* thereafter the State Tax Commission may reaudit and restate the account or recompute and reassess the tax . . ." This language is misleading since it would seem to conflict with the provision in the law requiring an audit and statement of the account within five years. However, the collection of the tax is another matter. There is no time limitation in the law for the collection of a tax shown to be due by the report filed. That is probably what the regulation means. As applied to the illustration given above, if the federal change in net income for 1945 was reported in 1948, the State Tax Commission could audit the issue presented by the federal change within five years of 1948. Other issues in the report filed in 1948 would have to be audited within five years of 1948. That means that the 1948 report disclosing the 1945 change in net income would have to be accepted as filed after five years. But any tax due as a result of the 1947 change would still be collectible.

> Benjamin Harrow, C.P.A., has been a member of our Society since 1928, and a member of the American Institute of Accountants since 1922. He is a member of the New York Bar and Professor of Law at St. John's University.
>
> Mr. Harrow is a past Vice-President of the Society. He is a past Chairman of the Committee on Publications and of the Committee on State Taxation. He is also a member of the Institute's Committee on Federal Taxation.
>
> Mr. Harrow is engaged in practice as a certified public accountant and attorney in his own office in New York City.

Taxable Year of a Partnership

The income tax is based upon an accounting period of twelve months, either a calendar year or a fiscal year ending on the last day of any month other than December. If a taxpayer with the consent of the Tax Commission changes his accounting period, a separate return is required for a fractional part of a year, since no return may be made for a period of more than twelve months. Furthermore the income for the fractional part of the year resulting from the changeover must be placed on an annual basis, since the basis of the tax is a twelve-month accounting period.

There are situations where an accounting period of less than twelve months is permitted. For example, a partnership is organized on July 1. It may set up its first fiscal period to end on the last day of any month. Its first return could cover a period of less than twelve months. The death of an individual ends his accounting period, and the final return could cover a period of less than twelve months. But under the state law the dissolution of a partnership does not end its accounting period. For example, suppose a partnership has been reporting on a fiscal year basis ending June 30. It decides to dissolve and actually distributes all of its assets by December 31, 1956. The individual partners are taxed on the distributive share of partnership income for the year within which the partnership year ends. For 1956 the individual partners will be taxed on partnership income for the period from July 1, 1955, to June 30, 1956. Will they also be taxed on partnership income for the period from July 1, 1956, to December 31, 1956? Under the state law such income is taxed to the individual partners in 1957, even though the partnership had dissolved and distributed its assets before January 1, 1957. The State Tax Commission adheres to the earlier federal rule that a return must be based upon an accounting period of twelve months. That can make an important difference to a partner who would prefer to include the income for the final period of the partnership in 1956 rather than 1957.

The federal rule under the 1954 Code now provides that the taxable year of a partnership will close with respect to all the partners if the partnership is terminated. Termination occurs if no part of the business continues to be carried on by the partners in partnership form, or if within a twelve month period there is a sale of 50% or more of the total interest in partnership capital or in partnership profits. Generally, the death, retirement or withdrawal of a partner or the sale of his partnership interest, or the addition of a new partner will not result in the closing of the taxable year of the partnership. With respect to a partner who sells his entire interest in the partnership or whose interest is liquidated the taxable year of the partnership does close.

Accounting at the S. E. C.

Conducted by Louis H. Rappaport, C.P.A.

Omission of Parent Company Statements

Several of the registration and report forms required to be filed with the SEC call for statements of the registrant parent company as well as consolidated statements of the company and its subsidiaries. The applicable instructions, however, provide that the financial statements of the parent company may be omitted in certain circumstances. Such statements, for example, may be omitted where the parent company (the registrant) is primarily an operating company and all subsidiaries included in the consolidated financial statements are "totally-held" subsidiaries.

Accountants who are familiar with Regulation S-X of the SEC know that the term "totally-held" subsidiary is not the same as a "wholly-owned" subsidiary. In the regulation a "totally-held" subsidiary is defined as follows:

> The term "totally-held subsidiary" means a subsidiary (a) substantially all of whose outstanding securities are owned by its parent and/or the parent's other totally-held subsidiaries, and (b) which is not indebted to any person other than its parent and/or the parent's other totally-held subsidiaries in an amount which is material in relation to the particular subsidiary, excepting indebtedness incurred in the ordinary course of business which is not overdue and which matures within one year from the date of its creation, whether evidenced by securities or not.

Where a substantial amount of the subsidiary's securities are not owned within the consolidated group, the subsidiary would not be termed "totally-held", and therefore the possibility of omitting the financial statements of the parent company would not exist.

The SEC has not elaborated in its published rules and regulations on the meaning of the word "substantially" in the definition quoted above. Whether or not parent company financial statements may be omitted will depend, in many cases, on what constitutes "substantial" in this context.

We had occasion to check this point with the Corporation Finance Division of the SEC recently, and the Commission's decision may be of interest to our readers who are faced with similar situations.

A listed company published its consolidated financial statements to stockholders showing the following:

Total assets	$100,000,000
Current assets	40,000,000
Current liabilities ..	17,000,000
Parent company long-term debt ..	20,000,000
Capital and surplus..	60,000,000
Net income	9,000,000

The company had a consolidated subsidiary, the minority interest in which was $500,000 at the balance sheet date. The report to stockholders did not contain parent company (unconsolidated) statements, since neither the company nor the certifying accountants thought such statements were either necessary or desirable.

If "substantial" is to be measured in relation to the subsidiary, then it might be held that the interest of outsiders in this subsidiary was substantial. If, however, the measurement was in relation to the consolidated picture, then it appeared that the outside interest was not substantial. In the circumstances of this case, the SEC agreed that holdings of outsiders were not of sufficient consequence *in relation to the consolidated picture* to require the submission of parent company financial statements, and, accordingly, such statements were omitted from the report filed with the Commission.

Louis H. Rappaport, C.P.A., is a partner in the firm of Lybrand, Ross Bros. & Montgomery, C.P.A.'s.

Office and Staff Management

A forum for the exchange of views and information on all aspects of the administration of an accounting practice.

Conducted by MAX BLOCK, C.P.A.

Handwriting Problems . . . Records Management . . .
Interruptions . . . Cost Accounting for a Principal's Time.

Handwriting Problems

The Handwriting Foundation, located at 1426 G Street, N.W., Washington 3, D. C., will send upon request a 13-page booklet describing six steps anyone can take to write more clearly. Both the victims and/or the oppressors should undertake to utilize this (or other) means of overcoming a serious condition that plagues the accounting profession.

Records Management

A new profession is quietly developing, namely that of records management. Large companies employ archivists, men and women who devote all of their time to the problems of preservation and destruction of papers, how to file, where to file, and so forth. Accountants are interested in this field because of their own and clients' problems.

The Records Management Association has a New York Chapter at 299 Madison Avenue, and accountants who have an active interest in the subject can obtain membership information from Miss Myrtle Mitzenius, c/o Ford, Bacon & Davis, Inc., 39 Broadway, New York 6, New York. The Chapter has an active program for the study and dissemination of information in this field.

MAX BLOCK, C.P.A. (N. Y., Pa.) is a former chairman of the Committee on Administration of Accountant's Practice of the New York State Society of Certified Public Accountants. He is a lecturer at The City College of New York in the graduate course on Accounting Practice. Mr. Block is a member of the firm of Anchin, Block & Anchin.

Interruptions

The moaning and groaning by busy accountants as they are interrupted by telephone calls, and by office and staff personnel who pop into their offices frequently during the day, might, if the sounds could be consolidated, equal the roar of Niagara Falls. Here is a condition that bears materially on the efficiency of a practitioner and which deserves careful study as to ways and means of organizing interruptions so as to minimize their effects on one's work program.

Some practitioners shut off their phones between certain hours, except perhaps to certain important people. They may be "out" or "in conference" during this period and it is then that they can concentrate on the matters pressing for thought and action.

Staff and office personnel, in some instances, are expected to inquire as to the availability of a principal from the telephone operator or a secretary before walking into his office.

Some defensive measures are necessary but they must be imposed most wisely and discreetly because there can be serious repercussions from clients, staff, and others from inept measures. Practitioners who have developed a method that is helpful, and would like to pass it on to suffering brethren, are requested to submit them to the editor of this column for publication.

Cost Accounting for a Principal's Time

To evaluate client profitability it is necessary that the chargeable time of principals (partners and individual practitioners) be taken into account. Two questions arise in this connection: first, what is chargeable time and, second, shall the charge be based on (a) salary cost, (b) cost plus overhead, or (c) cost plus overhead plus profit?

Upon analysis, it will be found that there are no ready answers that have universal application. Further, the conclusions with respect to the second question are tied in with the billing policy.

As to the allocation of a principal's time, the broad categories are the following:

1. Directly chargeable time:
   Direct participation
   Supervision
2. Indirectly chargeable time:
   Client administration (fee matters, personnel selection, timing, etc.)
3. General administration
4. Promotion
5. Personal

There undoubtedly are instances where it is not clearly possible to draw a clean-cut distinction between directly chargeable supervision time and indirectly chargeable general administration time. However, the discussion of the second question may be of help in this respect.

As to the second question, the answer appears to be linked with the billing policy, at least in part. In the interests of brevity and simplicity, an illustrative case is used for analysis purposes. The billing policy involves a per-diem rate for staff men that covers:

1. Salary cost
2. Overhead absorption
3. Profit

Such activities of the principal as are clearly overhead presumably are covered by item 2. Therefore the record keeping need be only such as to aid in the determination whether all overhead costs are being absorbed.

Where a principal renders such services as would be rendered by a staff member, or furnishes such supervision as is required of a partner, that constitutes directly chargeable time. In both cases, the position might properly be taken that the charge should cover salary cost (assigning to each principal a per-hour basis) plus overhead. One conceivably might include the profit factor on the ground that, in effect, the profit is being earned by the firm and that the principal is working for the firm.

On the other hand, in the consideration of the profit factor regard must be given to the profit factor in the staff per-diem rate. Is it intended that all of the firm's profit be derived from that source? Or, would it be equitable to include a profit factor in the principal's directly chargeable time? The answer depends, in part, on the adequacy of the staff per-diem rate, the salary base for the principal, and the extent of the principal's direct participation generally.

Indirect administration, usually an item that is not material, might perhaps be covered by item 2 in the staff per-diem rate. If not, it should be charged on a basis of cost alone, or cost plus overhead, if cost is inadequate.

Though the discussion is necessarily sketchy, the implications should be evident. Comments by practitioners who have dealt with this problem will be welcome.

Payroll Tax Notes

Conducted by Samuel S. Ress

Unemployment Insurance—Discharge of Employee Failing to Join Union, as Required by Union Contract, Deemed Voluntary Quit Without Good Cause . . . Unemployment Insurance and Reduction of Benefits for False Statement . . . Federal Withholding Tax Violation Notices Issued by Internal Revenue Service . . . Former Officers of Corporations Delinquent in Payment of Withholding Taxes Subject to 100% Penalty Assessments.

Unemployment Insurance—Discharge of Employee Failing to Join Union, as Required by Union Contract, Deemed Voluntary Quit without Good Cause

The Court of Appeals handed down a curious decision early this year on the question as to whether an employee who was discharged from his job at the request of the union with which the employer had a collective bargaining agreement, should be deemed a "voluntary quit without good cause" and, therefore, subject to disqualification from receiving benefits for 42 days after the date of his separation from employment. The Court held that the employee, who had failed to join the union after a 60-day trial period had elapsed, and was summarily discharged by his employer in accordance with the terms of the agreement between the union and the employer, was properly disqualified from receiving such benefits pursuant to the statute. In the *Matter of the Claim for Benefits under Article 18 of the Labor Law, made by Angelo Malaspina, Appellant, Edward Corsi, as Industrial Commissioner, Respondent,* the Court of Appeals, affirmed the decision of the Appellate Division reported in 285 App. Div. 564, which reversed Appeal Board Case No. 42,606-54.

Samuel S. Ress, an Associate Member of our Society since 1936, is a member of the New York and Massachusetts Bar. He has specialized in the payroll tax field since the inception of this type of legislation in 1936. He is engaged in public practice in New York City as a consultant on payroll tax problems.

Dr. Ress is a member of the Society's Committee on New York State Taxation and Chairman of the Sub-Committee on Unemployment Insurance.

The curious part of the decision is that the Court of Appeals which should concern itself with the law, appears to have disregarded the law, because of the facts, and the expressed fear that

> ". . . Any other conclusion would seriously impair the efficiency of union shop contracts, particularly in industries where employment is seasonal or job mobility high, for workers could change jobs at frequent intervals without being required to join the union in any of them. . . ."

The decision appears to be even more curious in the light of the expressed statutory guide as to the interpretation and application of the Unemployment Insurance Law as set forth in section 501 thereof, namely that:

> ". . . Involuntary unemployment is therefore a subject . . . which requires appropriate action by the legislature to prevent its spread and to lighten its burden. . . ."

Section 593 paragraph 1.(b) provides that

> ". . . voluntary leaving of employment shall not of itself disqualify a claimant if circumstances have developed in the course of such employment that would have justified the claimant in refusing such employment in the first instance under the terms of subdivision (2) of this section; . . . ."

Subdivision 2. provides that

> ". . . No refusal to accept employment shall be deemed *without good cause* (emphasis supplied) nor shall it disqualify any claimant otherwise eligible to receive benefits if
>
> (a) acceptance of such employment would either require the claimant to join a company union or would interfere with his joining or retaining membership in any labor organization; . . . ."

It would appear that the court went astray in confining itself to a consideration of the question as to whether or not the employee's action was "voluntary", but without going into the further question as to whether or not his action was "without good cause" as further provided in the statute.

This case appears to be a further example of judicial legislation, that requires legislative correction.

Unemployment Insurance and Reduction of Benefits for False Statement

A member of the Society has called the writer's attention to a rather serious situation involving charges of "wilful misrepresentation to obtain benefits" and the investigation thereof by the fraud squad of the Division of Employment.

He points out that he was called in recently by a claimant who had been summoned to appear before the fraud investigation unit of the Division of Employment. The claimant charged with the alleged fraud was called into an office and the member of the Society who appeared with him was denied an opportunity to be present at the interview. When the claimant came out he informed his representative that the investigator had had the claimant sign a paper wherein he was alleged to have admitted that he had collected benefits on a certain day when the investigator charged the claimant had been employed. The claimant told the representative that he understood that by signing the paper, he had agreed to return $7.50 in benefits allegedly overpaid to him. The member CPA read the paper and found that the claimant had admitted a wilful misrepresentation to obtain $7.50 in unemployment insurance benefits, for which he had agreed to a penalty requiring him to repay to the Division of Employment overpaid benefits of $180 for allegedly wrongfully collecting $7.50 in benfits.

A further investigation of the employer's records in the matter by the certified public accountant indicated that on the date in question the claimant's time card had been punched "in", but had not been punched "out". Further inquiry and scrutiny of the records indicated that it appeared highly unlikely that the claimant had worked that day. It was then determined by the Society member, who examined all the time cards in the shop for the week in question, that another employee had inadvertently punched "in" with the claimant's time card, and had punched "out" on his own time card, on which the time "in" had been written in by pencil.

As a result of these efforts a very serious injustice was avoided, and the erroneous charges were set aside. Similar oversights have given rise to charges of wage and hour law violations against employers, and it is important that practitioners be mindful of these possibilities when faced with similar situations.

Federal Withholding Tax Violation Notices Issued By Internal Revenue Service

The District Directors of Internal Revenue have embarked upon a rigid enforcement campaign against violators of the Withholding Tax payment provisions of the Internal Revenue Code. Notices of Penalty provisions of the law for failure to deposit taxes, are being

issued for each quarter after December 31, 1954, in which a taxpayer has failed to comply with the statute. The Internal Revenue Code of 1954 provides that a penalty shall be imposed for failure, *without reasonable cause*, to deposit taxes as required after December 31, 1954. This penalty, in general, is 1% per month of the amount of underpayment of the deposit for each month, or part of a month during which the underpayment continues. Taxes in excess of $100 imposed upon the payment of wages, are required to be deposited in Federal Reserve Banks or local banks authorized as government depositaries.

Both the employer and employee contributions, required under the Federal Insurance Contributions Act for Social Security Taxes as well as the Income Taxes Withheld from employees' wages and salaries, must be included in the deposit. The deposit must be made on or before the 15th day of the month following each of the first two months in each quarter. No deposit need be made for the third month of the quarter, which payment may be made to the District Director of Internal Revenue by check on or before the last day of the month following the third month in the quarter. However if the Federal Quarterly Payroll tax for the quarter is paid in its entirety by timely depositary receipts, then the taxpayer is allowed an additional 10 days following the regular filing date within which to file his form 941, Employers Federal Quarterly Tax Report, without being subject to a late filing penalty of 5 per cent of the amount of tax due for the quarter.

Former Officers of Corporations Delinquent in Payment of Withholding Taxes Subject to 100% Penalty Assessments

Pursuant to new procedures recently adopted, the Internal Revenue Service has instituted action against present and former officers of corporations alleged to have failed to pay withholding taxes, by making 100% penalty assessments against officers deemed to have been responsible for the delinquency on the part of corporate taxpayers. A number of such cases have come to the writer's attention and require expert and careful handling on the part of the taxpayer alleged to be responsible for the delinquency, and for which contingent liability neither the taxpayer nor his accountant may have made any provision. Also, it is doubtful whether a former officer of a corporate tax delinquent, may claim an income tax deduction on his personal income tax return for payment of the 100% penalty.

Letters to the Editor

MORTON D. KINTISCH
CERTIFIED PUBLIC ACCOUNTANT
58 Columbia Street, Albany 7, N. Y.

July 6, 1956

To the Editor of *The New York Certified Public Accountant:*

May I suggest that the CPA Magazine could be improved if all pages were perforated so that articles and advertisements can be removed easily to be filed or passed along to staff members.

Yours very truly,
/s/ MORTON D. KINTISCH

(*Note:* The Editor would be pleased to receive reader reaction to the foregoing suggestion.)

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF REVENUE
Harrisburg

July 10, 1956

To the Editor of *The New York Certified Public Accountant:*

The Tentative Capital Stock and Tentative Franchise Tax must be based on the amount of estimated tax reported for the preceding year, or the amount of tax last settled or resettled for a preceding year, whichever amount is greater.

Corporations that did no business in Pennsylvania prior to their 1956 taxable year, would have no basis on which to compute the Tentative Capital Stock or Franchise Tax for the taxable year 1956. Therefore, such corporations are not required to file the Tentative Capital Stock or Franchise Tax reports for the taxable year 1956.

The law provides that interest or penalty assessed by reason of failure to file a Tentative Report or make a payment shall not exceed an amount equal to interest and penalty computed on 80% of the tax liability for the current year as finally determined. If the Tentative Report is filed on time and a payment made equal to 80% of the tax as finally determined to be due for the year 1956, no penalty or interest will be imposed.

Corporations that have dissolved, merged, consolidated, or withdrawn from Pennsylvania which have filed their final 1956 corporate tax reports, prior to the due date of the 1956 Tentative (July 16, 1956), are not liable for and need not file the Tentative Report.

Very truly yours,
/s/ CHARLES S. SELIGMAN
Director of Corporation Taxes
For: Gerald A. Gleeson
Secretary of Revenue

Official Decisions and Releases

The University of the State of New York

IN THE MATTER
OF THE
Application for the revocation of the authorization and license heretofore granted to MORRIS LUDMERER to practice as a certified public accountant in the State of New York, and for the cancellation of his registration as such, and for such other relief as the premises warrant

Upon the records, findings and determinations of the Certified Public Accountancy Committee on Grievances, after due notice and hearing, and pursuant to the vote of the Board of Regents had and taken January 27, 1956; it is

ORDERED, That the determination of the Certified Public Accountancy Committee on Grievances be accepted and sustained, and that, in compliance with the recommendation of said Committee, certificate No. 7014, issued under date of October 7, 1938, to MORRIS LUDMERER, permitting him to practice as a certified public accountant in the State of New York, and his registration or registrations as a certified public accountant, wherever they may appear, be and the same hereby are suspended for a period of six months from the date of service of this order.

IN WITNESS WHEREOF, I, James E. Allen, Jr., Commissioner of Education of the State of New York, for and on behalf of the State Education Department and the Board of Regents, do hereunto set my hand and affix the seal of the State Education Department, at the City of Albany, this 3d day of February 1956.

JAMES E. ALLEN, JR.
Commissioner of Education

(SEAL)

IN THE MATTER
OF THE
Application for the revocation of the authorization and license heretofore granted to SIDNEY I. BRUCKMAN to practice as a certified public accountant in the State of New York, and for the cancellation of his registration as such, and for such other relief as the premises warrant

Upon the records, findings and determination of the Certified Public Accountancy Committee on Grievances, after due notice and hearing, and pursuant to the vote of the Board of Regents had and taken February 24, 1956; it is

ORDERED, That the determination of the Certified Public Accountancy Committee on Grievances be accepted and sustained, and that, in compliance with the recommendation of said Committee, certificate No. 6218, issued under date of December 10, 1937, to SIDNEY I. BRUCKMAN, permitting him to practice as a certified public accountant in the State of New York, be and the same hereby is revoked, annulled and canceled, and that his registration or registrations as a certified public accountant, wherever they may appear, be annulled and canceled of record.

IN WITNESS WHEREOF, I, James E. Allen, Jr., Commissioner of Education of the State of New York, for and on behalf of the State Education Department and the Board of Regents, do hereunto set my hand and affix the seal of the State Education Department, at the City of Albany, this 1st day of March, 1956.

JAMES E. ALLEN, JR.
Commissioner of Education

(SEAL)

Book Reviews

(Continued from page 467)

S. E. C. Accounting Practice and Procedure

By Louis H. Rappaport. THE RONALD PRESS COMPANY, New York, N. Y., 1956. Pages: xii + 555; $15.00.

Mr. Rappaport's compilation of S. E. C.'s accounting rules, decisions, opinions of the Chief Accountant, and a wide variety of informal rulings alone makes this volume a requirement for anyone whose practice includes frequent filings with the Commission. While the decisions and opinions are readily available in theory, actually they are too infrequently consulted in connection with each specific filing due largely to the absence of any digest of them arranged along ordinary accounting lines. Mr. Rappaport has done a first-rate job of extracting the substance of these materials and arranging them in a logical form for ready reference and for consideration in connection with particular accounting concepts.

To the person who is not familiar with S. E. C. procedures or who is confronted for the first time with the necessity of filing statements with the Commission, the book will be of major assistance although, as the author points out, its content is no substitute for reference to the actual S. E. C. regulations and forms. Its more than 500 pages also cover the major related topics which are involved in S. E. C. filings, such as listing applications, related annual reports, proxy statements and offering timetables. Some of the most valuable material comprises the suggestions given as to how to cooperate with others who must assist in the preparation of the registration statement, that is, underwriters, counsel and various specialists. The author has been liberal in the use of actual examples of many kinds of formal documents which may not be readily available to most readers as, for example, various forms of letters to underwriters, special forms of certificates or consents, and like materials. Presumably, these documents represent illustrations drawn from the practice of the author's firm. In substance, for the most part, they appear to be representative of general practice. However, many of the areas covered by these documents are still the subject of considerable discussion, not only among accountants but also among counsel, and it can hardly be said that they have yet crystallized fully. As a result, in practice there are many variations in the approach and content of such matters as the so-called "comfort" and "conformity" letters, usually furnished for the benefit of underwriters. In connection with the special letters to underwriters, referred to above, it would have been most interesting if the author's philosophy as to the purpose of the particular language in the letters, and especially the restrictive portions thereof, had been expanded.

In a book which for the first time seeks to organize a field of this complexity, it may be expected that subsequent editions will develop some of the areas covered more extensively and introduce some new avenues of approach or analysis. For example, it would seem that it might be helpful if more pointed comparisons were drawn between the requirements for financial statements under the 1933 and 1934 Acts. At present, the two areas are treated separately, and the reader is largely left to make comparisons himself. Perhaps a tabular presentation as an appendix would integrate the two Acts quite successfully, and to it there might also be added the listing requirements of the major exchanges.

In the technical area, it might be suggested that the discussion of "acquisitions" as opposed to "successions" for the purpose of determining what financial statements are to be filed might well be integrated with the discussion on purchases vs. pooling of interests, as it is understood the S. E. C. staff itself does.

Again, there are likely to be many who would disagree with some of the detail of the author's illustrative program for the review of uncertified financial statements, especially with respect to the scanning of general ledger accounts and similar references to the reviewing of accounting records. This subject has not received a great deal of discussion in the literature, and there may be question as to whether the suggested scope of review of accounting records, which are not confirmed by audit examination, is as desirable or essential as the program seems to imply. This and other similar problems as to the responsibility of the auditor for events occurring after the date of his certificate but before an effective filing with the S. E. C. can be expected to receive more attention in the future than they have in the past.

In addition to the textual material, the usefulness of the book is greatly increased by an elaborate index and an extensive bibliography of published comment on S. E. C. matters, as well as an illustrative timetable of the steps and deadlines that must be taken or met in filing for the sale of securities which must be registered with the Commission.

Finally, this volume not only will serve well the needs of the practitioner but it will also be a valuable addition to the teaching media available in this field. Used in conjunction with sample prospectuses, proxy statements, and the like, it will provide all that is needed as a basis for an advanced or seminar course in S. E. C. accounting.

WILLIAM W. WERNTZ

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